SUPREME COURT, U. S.

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In the Supreme Court of the United States

JULY TERM, 1975

No. 75-85

JAMES D. WELCH,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Florida

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Sheldon M. Schapiro

Attorney for Petitioner
2450 Hollywood Boulevard
Hollywood, Florida 33020
(305) 920-7480

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NO. 45,606

IN THE SUPREME COURT OF THE UNITED STATES

JUNE TERM, 1975

JAMES D. WELCH,
Petitioner,
v.
THE FLORIDA BAR,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Petitioner, JAMES D. WELCH, through his attorneys, Stone, Schapiro & Behar, of Hollywood, Florida, prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Florida, entered on April 15, 1975, disbarring the Petitioner from the practice of law, effective April 25, 1975.

JUDGMENT AND OPINION OF THE COURT BELOW

The Supreme Court of Florida, on January 29, 1975, issued an order adopting the findings of the Referee appointed by the Florida Bar, recommending that the Petit-

ioner be disbarred. The Petition for Rehearing was denied on March 18, 1975, (see Appendix). Said order is attached in the Appendix to the herein Petition. A Petition was filed in the Florida Supreme Court to delay the effective date of disbarment, and on April 15, 1975, the Florida Supreme Court set the effective date for the Petitioner's disbarment to April 25, 1975. Said order is set out in the Appendix attached to this Petition.

JURISDICTION OF THIS COURT

1. The date of judgment to be reviewed was entered by the Supreme Court of the State of Florida on April 15, 1975. This Petition is filed within ninety (90) days of said order.

2. The jurisdiction of this court is invoked under Title 28 US Code, Sec. 1257 (3) and Rule 19(1) of the Rules of this Court.

QUESTION PRESENTED FOR REVIEW

Were the Petitioner's constitutional rights to Due Process and Equal Protection, as guaranteed him under the Fourteenth Amendment to the United States Constitution, violated by the disciplinary procedures set up by the Florida Supreme Court, in the Bar Integration Rule.

CONSTITUTIONAL AMENDMENT INVOLVED

The Fourteenth Amendment to the United States Constitution, the pertinent provisions are set out in the Appendix attached to this Petition.

NATURE OF THE CASE

The Petitioner, JAMES D. WELCH, was licensed to practice law within the State of Florida on August 17, 1973. The Florida Bar filed a two count Complaint against the Petitioner, pursuant to Article XI of the Florida Bar Integration Rule, contained in the Appendix attached hereto. After the filing of the Complaint, Petitioner filed a motion to quash the charges, alleging a denial of his constitutional right to a fair trial, and an attempt to deprive him of property rights without due process of law, contrary to the Florida and United States Constitutions. Petitioner alleged that the disciplinary procedures, as set out by the Florida Supreme Court, in the Integration Rule, whereby the charges were initiated and directed to be filed by the Board of Governors of the Florida Bar; whereby the counsel to prosecute such charges was selected and appointed by the Florida Bar; whereby the Referee who would hear and make findings of fact and disciplinary recommendations, was appointed by the Board of Governors of the Bar; and whereby the findings and recommendations of the Referee, would be reviewed and

approved by the Board of Governors, the same body that originally filed the charges, pursuant to Rule 11.03(3) of the Integration Rule. (see Appendix). The Referee denied the motion to quash, by an order entered on January 30, 1974. (see Appendix).

Petitioner further filed a motion for an appointment of a special Referee, not appointed by the Board of Governors of the Florida Bar, to hear the cause. The motion provided:

> "1. Respondent has filed a Motion to Quash Charges in this cause, the principal grounds of which concern the fact the Board of Governors initiates the charges, directs the filing of formal charges, appoints Bar Counsel, appoints or selects the particular referee, receives and reviews the referee's finding and report.
>
> 2. Respondent suggests a referee to hear this cause be selected by other than the Board of Governors who directed the filing of the charges and who will receive and review the charges. Respondent suggests the Board of Governors delegate to Hon. Alvin Capp, the Bar Counsel in this cause, and counsel for Respondent the assignment of selecting a referee to hear

> these charges who will be agreeable to all parties to the proceedings." (see Appendix).

The Petitioner's motion for the appointment of a special referee was denied. (see Appendix).

On May 21, 1974, after a hearing, the Referee appointed by the Florida Bar, found that the Petitioner was guilty of the infractions alleged in the Bar's Complaint, and recommended the Petitioner's disbarment. On July 24, 1975, the Petitioner petitioned the Florida Supreme Court to review the report of the Referee. On January 29, 1975, the Florida Supreme Court issued an opinion, in which it adopted the findings of fact made in the Referee's report, and further found that there was no "unfairness" in the Bar proceedings. On April 15, 1975, the Florida Supreme Court set the effective date of the Petitioner's disbarment at April 25, 1975.

THE PROCEDURE

THE FLORIDA INTEGRATION RULE VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION

The Florida Bar was created by the Florida Supreme Court, as an official arm of the Florida Supreme Court, and makes attorneys admitted to practice law in Florida, a part of the judicial system of Florida, and officers of said court. (The Preamble of Integration Rule of the Florida Bar. See Appendix). Rule 11.02, Article XI of the Integration Rule, provides: "A license to practice law confers no vested right to the holder thereof, but is a conditional privilege revokable for cause." (see Appendix). This rule delegates the authority and power to take such proceedings to maintain "high ethical standards," to the Florida Bar. Rule 11.03, (see Appendix), designates entities which are considered as agencies of the Supreme Court for purposes of discipline. The Board of Governors of the Florida Bar is assigned to supervise the conduct of disciplinary proceedings. The discretion of the Board of Governors can be carried out by the executive committee. Rule 11.03(2), (see Appendix), provides that there shall be one grievance committee in each judicial circuit, and as many in each circuit as the Board of Governors shall find desirable. The grievance committee shall be

appointed by the Board of Governors. Rule 11.03(3) provides that the Board of Governors shall recommend members of the Bar to act as referees in disciplinary proceedings. Rule 11.03(5) provides for the Board of Governors to designate members of the Bar to represent the Florida Bar in such disciplinary proceedings as the Board of Governors may direct. Under Rule 11.04, the grievance committee is to conduct investigations of alleged misconduct of members of the Florida Bar. The proceedings of such grievance committees may be informal, and shall not assume the character of an adversary proceeding. Section 11.05(1) provides that the Board of Governors, may, after reviewing the record of the proceedings at the grievance level, issue a private reprimand, confirm the finding of probable cause, or may reverse the finding of the grievance committee. Under 11.05(2), if the Board of Governors finds probable cause, a formal complaint may be filed against a Respondent. A finding of no probable cause by the Board of Governors terminates any proceedings by the Florida Bar. The Bar Counsel is appointed by the Board of Governors (11.05(5)). The Board of Governors may defer or withhold prosecution when, in the opinion of the Board, where further proceedings "would not be in the interest of the public or The Florida Bar."

Trial by the Referee is an adversary proceeding, and is prepared and prosecuted

by the Bar Counsel. (Rule 11.06). The Respondent may be called as a witness by the Florida Bar, and be forced to make disclosures under threat of contempt of court, unless he claims a privilege or right properly available to him under applicable federal or state law. (Rule 11.06(7)). At the end of the trial, the Referee files a report containing his finding of fact, and recommendations as to punishment, along with a record of the proceedings, to the executive director of the Florida Bar. The Board of Governors under Rule 11.06(c), may find the Respondent not guilty and dismiss the charges; concur with the referee and issue a private reprimand; or seek review of the recommended discipline in the Supreme Court of Florida. Review of the report of a referee may be obtained by the Supreme Court of the State of Florida. Under Rule 11.09(e), the burden shall be upon the party seeking review to demonstrate that a report of a referee is "erroneous", "unlawful" or "unjustified". (see Appendix).

The Petitioner is well aware, that the United States Supreme Court, except for limited cases, does not review judgments of disbarments in State Courts. The Petitioner further realizes that an attorney is an officer of the court, and that the power of disbarment is necessary for the protection of the public, and to further the reputation of the Bar among the citizenry. See Theard v. United States,

354, US 278, 1 L.Ed. 2d 1342, 77 S.Ct. 1274 (1957). A state has undoubtedly broad powers to regulate the practice of law within its boarders, but the Supreme Court of the United States has had occasion in the past to recognize that in regulating the practice of law, a state cannot ignore the rights of individuals secured by the Constitution of the United States.

In the case of In Re Ruffalo, 390 US 544, 20 L.Ed. 117, 88 S.Ct. 1222 (1968) this court has stated that disbarment is penal in nature, and that the requirements of due process must be met.

This court stated at 390 US 551, 20 L.Ed. 2d 122:

> "These are adversary proceedings of a quasi criminal nature. CF. In Re Gault, 387 US 1, 33, 18 L. Ed. 2d 527, 549, 87 S.Ct. 1428. Notes. Disbarring a lawyer, presumptively to protect the public has the effect of punishing him; laws with such an effect must meet the test applicable to a penal statute. Ex parte Garland, 4 Wall 333, 18 L.Ed. 366; Connaly v. General Construction Company, 269 US 385, 391 70 L.Ed. 322, 46 S.Ct. 126; Chaplin Refining Company v. Corporation Commission of Oklahoma, 286 US 210, 243, 76 L.Ed. 1062, 52 S.Ct. 559; Giaccio v. Pennsyl-

vania, 382 US 399, 402, 403, 15 L.Ed. 2d 447, 86 S.Ct. 518.

In Brotherhood of Railroad Trainmen v. Virginia, 377 US 1, 12 L.Ed. 2d 89, 84 S.Ct. 113 (1964), this court recognized that states have broad powers to regulate the practice of law within their boarders, but in regulating the practice of law, a state cannot ignore the rights of individuals secured by the Constitution. "A state cannot foreclose the exercise of constitutional rights by mere labels." See N.A.A.C.P. v. Button, 371 US 415, 9 L.Ed. 2d 405, 83 S.Ct. 328 (1963).

Under the Florida Integration Rule, the Florida Supreme Court has delegated to the Board of Governors of the Florida Bar, the authority to supervise the disciplining of attorneys. The Board of Governors has the complete discretion as to whether or not to commence disciplinary proceedings in the first place. The only objective standard laid down by the Florida Supreme Court to control this exercise of delegated discretion, is the phrase "whether or not further proceedings would be in the interest of the public or the Florida Bar." The Board of Governors appoints the referee, who is the finder of fact in the "adversary" proceedings; appoints the Bar Counsel, who acts as the prosecutor; and has the discretion to reverse the finding of the appointed referee as to facts or punishment. The Petitioner requested

that an impartial referee be appointed, who was not directly connected with the Board of Governors of the Florida Bar. This motion was denied by the Referee. (see Appendix). The "Mixing of Functions" was condemned by the Court in Mack v. Florida State Board of Dentistry, 296 F. Supp. 1259 (So. Dist. Fla. 1969), which dealt with Due Process requirements in administrative hearings. Citing the case of In Re Ruffalo, supra, the court stated at page 1263:

> "That case, which involved a procedure followed in disbarment of a lawyer, held that these proceedings are adversary and of a quasi criminal nature. Although In Re Ruffalo, supra, dealt with notice as an element of due process, the mixing of functions and appearance of unfairness such as we have here have not been beyond the condemnation of other courts. American Cyanimid Co. v. Federal Trade Commission, 363 F.2d 757 (6th Cir. 1966), at Amos Treet & Co., Inc., v. Security and Exchange Commission, 113 US App. D.C. 100, 306, F.2d 260 (1962) the court held that the mixing of functions by the Board, as outlined in the findings of fact, deprived the plaintiff of procedural due process of law contrary to the pro-

visions of the due process clause of the 14th Amendment to the United States Constitution."

The District Court also held that the burden of proof to be followed at these types of administrative hearings must be proof to satisfy the finder of fact beyond a reasonable doubt. The Fifth Circuit Court of Appeals in Mack v. Florida State Board of Dentistry, 430 F.2d 862 (1970) rejected the view that the standard of proof required, was beyond a reasonable doubt. Regarding the "mixing of functions" (the same body investigating complaints, weighing the reports, filing charges, holding hearings, conducting prosecution, and deciding merits) the court declined to decide the issue, as not necessary to the decision of the controversy. The court went on to hold that the hearing amounted to a "confrontation", rather than a fair and impartial hearing, and affirmed the judgment of the district court. The Florida Board of Dentistry petitioned this court for a Writ of Certiorari, which was denied at 401 US 960, 28 L.Ed. 2d 245, 91 S.Ct. 971 (March 8, 1971). The Mack case was cited with approval in Berryhill v. Gibson, 331 F.Supp. 122 (1971), which was affirmed by this court at 411 US 564, 36 L.Ed. 2d 488, 93 S.Ct. 1689 (1973).

"A fair trial in a fair tribunal, is a basic requirement of due process."

In Re Murchison, 349 US 133, 136, 99 L.Ed. 942, 946, 75 S.Ct. 623; Holt v. Virginia, 381 US 131, 136, 14 L.Ed. 2d 290, 294, 85 S.Ct. 1375. The Board of Governors possesses absolute discretion in the disciplining of attorneys, without any objective standards to control its exercise of delegated discretion. It acts as grand jury, prosecutor, and trial judge, and under the Florida Integration Rule, an attorney is not given the benefit of the "separation of power dictrine," that the driver of a vehicle charged with driving under the influence of alcohol would receive before his driving privileges are revoked. The failure to separate the investigative, prosecution, fact finding and punishment portions of this penal type hearing concentrates all power into one body, whose members may have an interest in the outcome of the proceedings. These proceedings have the same vice as legislative proceedings, which would amount to a "Bill of Attainder". The Bill of Attainder Clause was an attempt by the Founding Fathers to implement the safeguards of the separation of power doctrine. In United States v. Brown, 381 US 437, 14 L.Ed. 2d 484, 85 S.Ct. 1707 (1965), at 381 US 442, 14 L.Ed. 2d 488, this court stated:

> "The Constitution divides the national government into three branches - legislative, executive and judicial. This separation of powers was obviously

not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny. For if governmental power is fractionalized, if a given policy can be implemented only by a combination of legislative enactment, judicial application, and executive implementation, no man or group of men will be able to impose its unchecked will. James Madison wrote:

> 'The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.'"

The Bill of Attainder Clause is meant to apply to the legislature. The Florida Supreme Court, in laying down the regulations contained in the Florida Integration Rule, is performing its rule making, or legislative function, as opposed to the classic judicial function. In laying out its rules to regulate the Bar, it provides for an

extension of itself, the Florida Bar, to be presided over by an additional extension of itself, the Board of Governors, to perform the investigative and prosecution, and pardon function, which are ordinarily conducted by the executive; and the fact finding and adjudicative function, which is ordinarily provided by the judiciary. Review of itself is then provided, with the disciplined attorney having the burden of showing that the referee, the court's extension of itself, made an "unlawful" or "unjustified finding". An examination of this procedure demonstrates that the vices feared by our founding fathers in failing to provide the constitutional safeguards of "separation of powers", has befallen the legal profession in the State of Florida. The legal profession is the only "class" of persons falling under this constitutional infirmity. In effect, the Florida Supreme Court makes the rules, and through an extension of itself, files the charges, investigates, prosecutes, tries, and reviews its own findings. The members of the Board of Governors and the Referee assigned by said Board, may be in direct financial competition with a party they may be called upon to "judge", or because of prior difficulties, either public or private, prejudice or bias may exist on their part. By mixing the functions normally kept separate by the separation of power doctrine, Petitioner was denied Due Process. In Berryhill v. Gibson, 331 F.Supp. 122 (1971), a three judge District Court, deciding a question relating to the Due Process requirements

of administrative hearings, stated at page 125:

> "The question of possible bias of the Board members in this case is not whether the members are actually biased, but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him. A basic element of justice in America is that the court must avoid, not only evil, but, the appearance thereof. The Supreme Court of the United States In Re Murchison, 349 US 133, 75 S.Ct. 623, 99 L.Ed. 942 wrote the following:
>
> > 'A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has already endeavored to prevent even the probability of unfairness. To this end, no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision.

> Circumstances and relationships must beconsidered. This court has said, however, that "every procedure Whice would offer a possible temptation to the average man as judge * * * not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." Tumey v. Ohio, 273 US 510, 532, 47 S.Ct. 437, 44, 71 L.Ed. 749, 750 (50 ALR 1243). Such a stringent rule may sometimes bar trial judges who have no actual bias and who would do their best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice." Offutt v. United States, 348 US 11, 13, 99 L.Ed. 11, 75 S.Ct. 11, 13.'"

This court affirmed the decision of the District Court, in Gibson v. Berryhill, 411 US 564, 36 L.Ed. 2d 488, 93 S.Ct. 1689 (1973), that the administrative process was so defective and inadequate as to deprive the Plaintiffs of due process of law. The court stated at 411 US 570, 36 L.Ed. 2d 495:

> "For the district court, the inquiry was not whether the Board members were 'actually biased' but whether, in the natural course of events, there is an indication of a possible temptation to an average man sitting as a judge to try the case with bias for or against any issue presented to him. 331 F.Supp., at 125. Such a possibility of bias was found to arise in the present case from a number of factors. First was the fact that the board, which acts as both prosecutor and judge in de-licensing proceedings, had previously brought suit against the plaintiffs on virtually identical charges in the state court. This the District Court took to indicate that the members of the board might have 'pre-conceived opinions' with regard to the cases pending before them."

The Petitioner had requested, and had been refused the appointment of a referee not connected with the Board of Governors. A hearing was not conducted in order to determine if the Referee and the Petitioner had competing economic interests. The Referee's law office and the Petitioner's office were in the same county, and it would require speculation, as to whether

or not the Referee or members of the Board of Governors had competing economic interests with the Petitioner. During the course of the hearing before the Referee, counsel for the Bar brought out that the Petitioner had been the subject of prior disciplinary proceedings by the Florida Bar. (Tr 101,104,112-113,120). The Referee at the hearing expressed that he had knowledge of the Petitioner's prior difficulties, and that the Petitioner had never been disbarred to his knowledge. (Tr.113). These factors lead to the inextricable question as to whether members of the Board of Governors and the Referee might have had a pre-conceived opinion regarding the Petitioner's case, thus denying your Petitioner a fair hearing and review.

Under Rule 11.09(e) of Article XI, your Petitioner, upon his initial access to a court, has the burden of demonstrating that the report of the referee is "erroneous", "unlawful", or "unjustified." The Integration Rule, in effect, creates a statutory presumption of the referee's correctness. In Speiser v. Randall, 357 US 513, 525, 2 L.Ed. 2d 1460, 1462, 78 S.Ct. 1332 (1958), the court comments on burden of proof, and how it affects litigation: "In all kinds of litigation it is plain that where the burden of proof lies may be decisive of the outcome. Cities Service Oil Company v. Dunlap, 308 US 208, 84 L.Ed. 196, 60 S.Ct. 201; United

States v. New York, N.H.N. and H.R.R. Co. 355 US 253, 2 L.Ed. 2d 247, 78 S.Ct. 212." The court, in Speiser, states at 357 US 526, 2 L.Ed. 2d 1416:

> "It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions. Bailey v. Alabama, 219 US 219, 239, 55 L.Ed. 191, 200, 31 S.Ct. 145."

The Petitioner's initial access to a court, under the guise of judicial review, is in effect requesting one of the branches of government, the Florida Supreme Court, to examine and pass upon the propriety of a hearing conducted by an extension of itself. The judges of the Florida Supreme Court are elected state officials. A governmental agency cannot provide a meaningful appeal tc itself. Such a procedure is not calculated to provide a truly judicial review as envisioned by our founding fathers. If an appeal is afforded to litigants, it must be meaningful, and it cannot deprive a class of individuals, to-wit: attorneys, the right to such a meaninfgul appeal, by the use of administrative procedures which create burdens

which are not foisted upon the remainder of the population. In Lindsey v. Normet, 405 US 56, 77, 31 L.Ed. 2d 36, 52, 92 S.Ct. 862 (1972):

> "This court has held that in a full and fair trial on the merits as provided, the Due Process Clause of the 14th Amendment does not require a state to provide appellate review (citation omitted), and the continuing validity of these cases is not an issue here. When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied others without violating the Equal Protection Clause. Griffin v. Illinois, supra; Smith v. Bennett, 365 US 708, 6 L.Ed. 2d 39, 81 S.Ct. 895 (1961); Lane v. Brown, 372 US 477, 9 L.Ed. 2d 892, 83 S.Ct. 768 (1963); Long v. District Court of Iowa, 385 US 192, 17 L.Ed. 2d 290, 87 S.Ct. 362 (1966); Gardner v. California, 393 US 367, 21 L.Ed. 2d 601, 89 S.Ct. 580 (1969); Cf Coppedge v. US, 369 US 438, 8 L.Ed. 2d 21, 82 S.Ct. 917 (1962); Ellis v. US, 356 US 674, 2 L.Ed. 2d 1060, 78 S.Ct. 974 (1958)."

Lawyers may not be separated into a special class upon which special burdens may be imposed, which burdens cannot be placed upon

other groups. Lawyers should be entitled to the same due process and equal protection as that accorded to other citizens of the United States.

> "The establishment of prompt, efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance and constitutional adjudication. But the constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more than mediocre ones." Stanley v. Illinois, 405 US 645, 656, 31 L.Ed. 2d 551, 92 S.Ct. 1208.

The bias of prejudice violative of due process, which may arise out of combining investigation, presecution, fact finding, punishment, and judicial review all in one agency, can be gathered from Mr. Justice Black's dissenting opinion in Cohen v. Hurley, 366 US 117, 148-149, 6 L.Ed. 2d 156,

11 S.Ct. 954, 175-177 (1961):

> "Quite differently from the majority, I think that the legal profession not only can, but should endure what the majority refers to as the 'disrespect which would result from the publicity, delay and possible ineffectiveness in their exposure and eradication that might follow could miscreants only be dealt with through ordinary investigatory and prosecutorial processes.' Indeed, I cannot understand how any man in this country can assume that 'publicity,' 'delay' and 'ineffectiveness' brought on by observance of due process of law can ever be disrespectful. I am not at all certain, that the legal profession can survive in any form worthy of the respect we want it to have if its internal intergroup conflicts over professional ethics are not rigidly confined by just those 'ordinary investigatory and prosecutorial processes' which, though belittled by the majority today, are enshrined in the concept of equal

> protection and due process. For if the legal profession, can, with the aid of those members of the profession who have become judges, exclude any member it wishes, even though such exclusion could not be accomplished within the limits of the same kind of due process that is accorded to other people, how is any lawyer going to be able to take a position or defend a cause that is likely to incur the displeasure of the judges or whatever group of his fellow lawyers happen to have the authority over him? The answer is that in many cases, he is not going to be able to take such a position or defend such a cause and the public will be deprived of just those legal services that, in the past, have given lawyers their most bona fide claim to greatness. * * * The respect for a rule of law administered through due process of law is the very hallmark of a lawyer - without it he cannot keep faith with his profession." (emphasis added).

The persons who most often need the protection of due process are those who take unpopular stances on controversial subjects, or those who have had prior occasions to encounter disciplinary or investigatory organs of our government. The Petitioner, though

not having been previously been disbarred, has been the subject of previous disciplinary proceedings involving the Florida Bar. The disciplinary procedure set up by Article XI of the Florida Supreme Court's Integration Rule, is not calculated to erase the spectre of prejudice, which may have been raised in the minds of the Referee or Board of Governors, by the Petitioner's previous disciplinary encounters. To compound the likelihood of prejudice resulting from the procedure followed by the Florida Supreme Court to investigate complaints against attorneys, the Florida Supreme Court itself has been the subjectof investigation by the legislature. Two Justices have resigned under threat of impeachment, and an additional Justice's mental stability has been publicly called into question. The sum total of the procedures used under the Florida Integration Rule, and the review provided by said Rule, was to deprive your Petitioner of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution.

PETITIONER IS DENIED EQUAL PROTECTION OF THE LAW BY THE DISCIPLINARY PROCEDURES SET OUT IN ARTICLE XI OF THE INTEGRATION RULE OF THE FLORIDA SUPREME COURT.

The Petitioner is further denied equal protection of law, because there are no clear standards set up for the Florida Supreme Court in the Integration Rule, which is to act as a guide to the Board of Governors of the Bar, as to when to defer or withhold prosecution, under Rule 11.05(1), relating to review of a grievance committee report, or Rule 11.05(5), relating to control of proceedings. Under Rule 11.05(1), there is no standard set up by the Florida Supreme Court to control the discretion of the Board of Governors, as to when they will issue a reprimand, and when they will not. In Rule 11.05(5), the Board of Governors is guided by the vague standard of what would be "in the interest of the public or the Florida Bar." The Florida Supreme Court in commenting on the delegation of judicial authority to administrative authorities, in Canney v. Board of Public Instruction of Alachua City, 278 So.2d 260 (1973), which cites to McRea v. Robbins, 9 So.2d 284, 151 Fla. 109 (1942), wherein the Court states:

> "Where a statutory board, commission, or officer of other tribunal or agency is lawfully given administrative and limited quasi-legis-

> lative or quasi-judicial authority or duties, such authority or duties must not include any substantive legislative or judicial powers that may not be delegated; and such authority must be duly defined and limited by laws complete in themselves in prescribing delegated authority, so that by appropriate judicial review and control any action taken pursuant to such delegated authorities or duties may be kept within the defined limits of the authority conferred and within the express and implied limitations of all controlling provisions and principles of dominant law."

The test laid down by the Florida Supreme Court for quasi-judicial administrative agencies seems to be violated by the Integration Rules aforementioned. The lack of any clearly defined standards to control the exercise of discretion by the Board of Governors of the Florida Bar will result in the likelihood of different treatment being accorded to attorneys subject to discipline. This difference will not be based upon law, but on the whim, caprice, private interest, or personal feelings of the individuals occupying the positions of the Board of Governors. The conflicting interest within the legal profession was noted by Justice Black, in Note 37 of his dissenting opinion in Cohen v. Hurley, supra, which is found at 366 US 149,

6 L.Ed. 2d 176, and states:

> "The true nature of the underlying controversy in this case, is a controversy between economically competing groups of lawyers, as shown by the fact that four different associations of lawyers filed briefs as amici curiae in the present proceedings - two favorable to the petitioner and two favorable to the respondent."

The Equal Protection Clause of the Fourteenth Amendment prescribes "state action" of every kind that operates to deny any citizen the equal protection of the laws. Gilmore v. City of Montgomery, 41 L. Ed. 2d 304, --- US ---(1974). The Board of Governors is a creature of the Florida Supreme Court, and is set up by the rules of said Court. The Supreme Court of Florida promulgated the Integration Rule, as a result of the directive contained in the Florida Constitution, Article V, Section 15, which provides: "The Supreme Court shall have exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." There is therefore, no question that the Florida Integration Rule constitutes "state action". As previously cited, state action to disbar an attorney is penal in nature. The standards set up by the Florida Supreme Court to

control the discretion of the Board of Governors of the Bar is vague or totally nonexistent. This lack of control of the Board of Governors, a group of private attorneys exercising judicial authority, will result in a random pattern of punishment which cannot be considered a rational means of enforcing state interest, to control and even-handedly discipline the legal profession. Cf. McLaughlin v. Florida, 379 US 184, 191, 13 L.Ed. 2d 222, 85 S.Ct. 283, (1964) Rinaldi v. Yeager, 384 US 305, 308, 16 L.Ed. 2d 577, 580, 86 S.Ct. 1497 (1966), Carrington v. Rash, 380 US 89, 92, 13 L.Ed. 2d 675, 678, 85 S.Ct. 775 (1965). The state interest is not served by the unconscionable delegation of authority to the Board of Governors; just the opposite, it raises the likelihood that lawyers who have the ear of the members of the Board of Governors, will receive different treatment than other lawyers not so situated. Such a specter can only degrade the legal profession in the eyes of the public, and decrease the respect that attorneys have in their governing body. In Eisenstadt v. Baird, 405 US 438, 31 L. Ed. 2d 349, 92 S.Ct. 1029 (1972), the court at 405 US 345, 31 L.Ed. 2d 363 cites to Mr. Justice Jackson's concurring opinion in Railway Express Agency v. New York, 336 US 106, 112-113, 93 L.Ed. 533, 540, 69 S.Ct. 463 (1949), wherein the Justice stated:

"The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority must be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retributions that might be visited upon them if larger numbers were affected. Courts can take no better measure to assure that laws be equal in operation."

CONCLUSION

It is respectfully submitted that the matters here presented deal with basic and fundamental constitutional rights arising under the Fourteenth Amendment to the United States Constitution. This Petition deals with a question of Federal law which has not been, but should be clearly settled by this Honorable Court.

Respectfully submitted,

SHELDON M. SCHAPIRO
Attorney for Petitioner
2450 Hollywood Blvd.
Suite 400
Hollywood, Fla. 33020

BY: /s/ Sheldon M. Schapiro
SHELDON M. SCHAPIRO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were furnished Alvin Capp, Esq., 800 East Broward Boulevard, Suite 505, Fort Lauderdale, Florida 33301; Norman Faulkner, Esq., The Florida Bar, Tallahassee, Florida; and the Clerk of the Florida Supreme Court, Tallahassee, Florida, by mail delivery, this 11th day of ~~July~~ August, 1975.

BY: /s/ Sheldon M. Schapiro
SHELDON M. SCHAPIRO

APPENDIX

APPENDIX A

SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1975

CASE NO. 45,606

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

Opinion filed January 29, 1975.

A Case of Original Jurisdiction - The Florida Bar.

Norman A. Faulkner, Staff Counse; Wilson J. Foster, Jr., Assistant Staff Counsel; and Alvin Capp, for Complainant

J. Ben Watkins of Watkins, Hill and Marts, for Respondent

PER CURIAM

This is a disciplinary proceeding by The Florida Bar against James D. Welch. Respondent has filed a petition for review

pursuant to Rule 11.09, Integration Rule.

The Florida Bar filed a two-count complaint against respondent. Following a hearing, the Referee recommended dismissal of Count Two. As to Count One, he found:

> "1. Respondent agreed to handle matters involving Mr. Keyes' son for a $750.00 fee.
>
> 2. Respondent did request and receive funds from a released court cash bond.
>
> 3. Mr. Keyes authorized Respondent to subtract the fine ($101.00) if any from the cash bond.
>
> 4. Respondent did not place it in a trust account, in escrow, or in an identifiable client fund account.
>
> 5. Respondent did unlawfully take and convert to his own use $899.00 belonging to Mr. Keyes.
>
> 6. Respondent had no agreement allowing him to take $899.00.
>
> 7. Respondent refused or failed to redeliver the $899.00 to Mr. Keyes.

8. Respondent claimed he did a lot of extra work which made the fee payment he received ($750.00) and the amount he converted ($899.00) a more reasonable fee for the work he did.

9. The Respondent did not testify as to any facts at the Hearing."

Satisfied that these findings were supported by a clear and convincing preponderance of the evidence in the record, the Referee recommended:

"...[T]hat the Respondent be found guilty under Count One as charged in the Complaint and specifically that he be found guilty of violations of his oath as attorney of Article XI of the Integration Rule, Rule 11.02, and D.R. 9-102 (A)(2) and D.R. 9-102(B)(4) of the Code of Professional Responsibility, and additional Rule 1 of the former Additional Rule governing Conduct of Attorneys in Florida."

Respondent has a prior disciplinary history. He had been disbarred in April, 1965, for misappropriation of clients' funds--the same offense of which he presently stands charged. The disbarment was approved by this

Court in Welch v. The Florida Bar, 109 So. 2d 767 (Fla. 1959).[1] He was subsequently reinstated[2] but was later publicly reprimanded by this Court and placed on three years probation in 1972. The Florida Bar v. Welch, 272 So.2d 139 (Fla. 1972). We there found, based in part on respondent's own testimony, that he had fraudulently induced the complaining witness to deed her property to respondent's wife for a grossly inadequate consideration. We stated:

> "... Respondent's prior misconduct, together with the infraction here under consideration, constitute two strikes against him. Any further misconduct will necessarily be viewed in light of these prior disciplinary breaches." 272 So.2d at 141."

---

[1]Affirming the order of the Circuit Court for Broward County in State v. Welch, Case No. L59,910A, November 8, 1959.

[2]Welch v. Board of Governors, The Florida Bar, 173 So.2d 688 (Fla. 1965).

Considering these past disciplinary actions, the Referee recommended that respondent be disbarred from the practice of law in Florida.

In the present proceedings, respondent has contended that: (1) the punishment recommended by the Referee is grossly excessive; (2) he was deprived of due process because the Florida Bar followed the Integration Rule of the Florida Bar; (3) he was compelled to testify against himself relative to Count Two.

With regard to the alleged excessiveness of the punishment, we find this argument to be groundless in view of our previous admonitions to respondent. As to the alleged unfairness of the Bar proceedings, we have previously considered and rejected this argument in State ex rel. The Florida Bar v. Grant, 85 So.2d 232 (Fla. 1956). Finally, concerning respondent's third contention, it is sufficient to note that the allegedly "compelled" testimony pertained solely to Count Two, which was ultimately dismissed.

After considering the nature of the present offense in light of respondent's past disciplinary history, we are of the unanimous opinion that the findings and recommendations of the Referee should be adopted. They are hereby approved, and the respondent is hereby disbarred from the practice of law in this state.

Execution for costs against respondent will be directed by subsequent order.

It is so ordered.

ADKINS, C.J., ROBERTS, McCAIN and OVERTON, JJ. and RUDD, Circuit Court Judge, Concur

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

CASE NO. 45,606

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

PETITION TO DELAY
EFFECTIVE DATE OF DISBARMENT

Respondent, JAMES D. WELCH, by his undersigned attorneys, pursuant to the provisions of Article XI, Integration Rule of The Florida Bar, petitions this Court to delay the effective date of the order of disbarment entered in this cause for 120 days to allow Respondent to conclude or otherwise despose of matters in his office without adverse effect upon the rights of clients, and in support thereof says:

1. This Court has previously affirmed the recommendation of disbarment by the

Florida Bar, and by order entered March 18, 1975, denied the petition for rehearing.

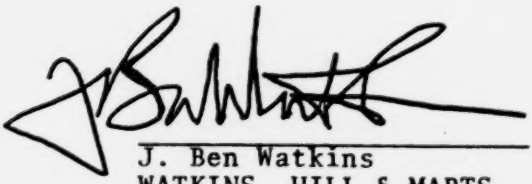
2. Respondent has matters pending in his office and hearings and trials scheduled, and if these matters are summarily concluded instanter by Respondent there would be severe adverse effect upon the rights of the clients involved.

3. Respondent recognizes the granting of additional time to conclude the affairs of his office in an orderly fashion would preclude new assignments or any activities which might constitute the practice of law other than those necessary to have an orderly transfer or conclusion of those matters which are already prepared.

4. The rights of the clients would require at least 120 days so Respondent might make necessary contacts and arrange transfer of pending matters or conclusion of those matters nearing completion, thereby eliminating the cost to clients of duplicate efforts for preparation.

5. Respondent agrees to proceed expeditiously to achieve the intent and purpose for which the extension of time might be granted by this Court.

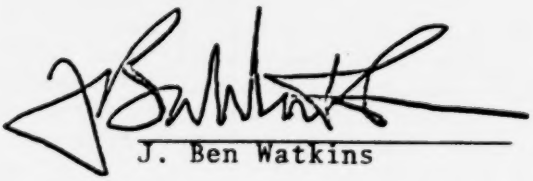
WHEREFORE, Respondent respectfully requests 120 days delay in the effective date of disbarment so as not to severely prejudice the rights of his clients.



J. Ben Watkins
WATKINS, HILL & MARTS
Post Office Box 1814
Tallahassee, Florida
32302
Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition To Delay Effective Date of Disbarment has been furnished to The Florida Bar, Apalachee Parkway, Tallahassee, Florida 32301; and to Alvin Capp, Esquire, Cumberland Building - Suite 505, 800 East Broward Boulevard, Ft. Lauderdale, Florida 33301, Attorney for Complainant, by U. S. Mail, this 27th day of March, 1975.



J. Ben Watkins

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1975

TUESDAY, APRIL 15, 1975

CASE NO. 45,606

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

Upon consideration of Petition to Delay Effective Date of Disbarment and Petition for Extension of Time to Comply with Rule 11.10(6) of the Integration Rule, it is ordered that the effective date of disbarment be and is hereby fixed for April 25, 1975, to enable respondent to seek review in the Supreme Court of the United States and obtain any further stay from that court, and it is further

ORDERED that Petitioner be and is hereby allowed to and including April 25, 1975, to comply with Rule 11.10(6), and thereafter pending review by the United States Supreme Court should it stay this cause and review this Court's judgment.

A Ture Copy

TEST:

Sid J. White
Clerk, Supreme Court.

sg
cc: Messrs. Watkins, Hill & Marts
Honorable Alvin Capp
Honorable David G. McGunegle
Honorable Sheldon M. Schapiro

APPENDIX D

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO. 72-D-5 and

CASE NO. 71-D-9

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent,

COMPLAINT

The Florida Bar, complainant, files this Complaint against James D. Welch, respondent, pursuant to Article XI of the Integration Rule of The Florida Bar, as amended, and alleges:

COUNT I

1. The respondent, James D. Welch, is, at all times hereinafter mentioned was, a

member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

2. This Complaint is filed by The Florida Bar, by direction of its Board of Governors, and all conditions prerequisite to the filing of said Complaint, required by the Integration Rule, have been fulfilled.

3. During or about May of 1969, the respondent, James D. Welch, became employed to act as defense attorney for two youths. On August 7, 1969, the respondent wrote to John M. Keyes, his client and the father of one of the youths, Christopher J. Keyes. In that letter, the respondent stated his fee to be $1,500.00 for both of the boys. The respondent again stated his fee as $1,500.00 in another letter from him to Mr. Keyes on September 2, 1969. Thus, Mr. Keyes' portion of the fee was $750.00.

4. In the course of the criminal litigation which the respondent subsequently handled, the respondent requested, received, and placed in escrow a bond of $1,000.00 from Mr. Keyes, and an equal sum for the other litigant. On August 7, 1971, the respondent received a telegram from Mr. Keyes which referred to these funds as a bond and which authorized the respondent to pay any fines from said bond.

5. On August 9, 1971, subsequent to

his receipt of the telegram from his client, the respondent, James D. Welch, nevertheless wrote to his client, Mr. Keyes, and stated that he, the respondent, intended to keep approximately $899.00 of the bond as a legal fee, after paying only approximately $101.00 in fines and costs from the original $1,000.00 bond.

6. On November 29, 1971, the respondent again stated his intent to retain approximately $899.00 as an additional legal fee. The respondent, James D. Welch, did so state his intent despite acknowledging that ownership of these funds was disputed by Mr. Keyes, as Mr. Keyes stated in a letter of November 16, 1971. Subsequent to this dispute, the respondent did in fact convert the approximately $899.00 of the escrowed bond to his own use.

7. By reason of the foregoing, the respondent has violated his oath as an attorney and has also violated Rule 11.01 of Article XI of the Integration Rule, and Disciplinary Rules 9-102(A)(2) and 9-102(B)(4) of the Code of Professional Responsibility, and Canons 12 and 38 of the former Canons of Professional Ethics, and Additional Rule I of the former Additional Rules Governing the Conduct of Attorneys in Florida.

COUNT II

8. Complainant realleges the matter

presented in Paragraph 1 of Count I.

9. Complainant realleges the matter presented in Paragraph 2 of Count I.

10. On or about June of 1971, the respondent, James D. Welch, became employed as defense attorney for his client Gerald N. Swanson, in an eviction litigation. In the course of his employment, the respondent did solicit and receive from his client, Mr. Swanson, approximately $800.00. The litigation involved an alleged $900.00 in rent arrears owed by Mr. Swanson.

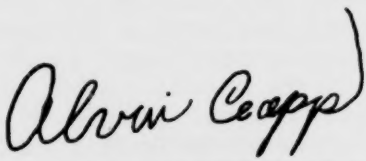
11. In the course of the litigation, which resulted in Mr. Swanson's eviction, the respondent placed $600.00 of the funds he received in an account marked "in trust." The respondent received $50.00 as a retainer and also placed an additional $150.00 in his regular account, although his client, Mr. Swanson, intended those funds to be an escrow for the rent arrears.

12. On June 23, 1971, without a proper accounting to his client, the respondent, James D. Welch, did disburse $300.00 of the trust funds to his client's creditor and did then convert to his own use as a legal fee the remaining $300.00 in trust. By this method, the respondent improperly accounted for approximately $450.00 which he converted to his own use.

13. By reason of the foregoing, the respondent has violated his oath as an attorney and has also violated Rules 11.02 of Article XI of the Integration Rule, and Disciplinary Rules 9-102(A)(2) and 9-102(B)(4) of the Code of Professional Responsibility.

WHEREFORE, the Complainant prays that the respondent may be appropriately disciplined in accordance with said Article XI of the Integration Rule of The Florida Bar.

Dated at Fort Lauderdale, Broward County, Florida, this 17th day of August, A.D. 1973.



Alvin Capp, Counsel
for Complainant
2856 East Oakland Park
Boulevard, Fort Lauderdale, Florida 33306

Telephone: 563-6101

APPENDIX E

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO. 72-D-5 and

CASE NO. 71-D-9

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

MOTION TO QUASH CHARGES

Respondent, JAMES D. WELCH, by his undersigned attorneys, pursuant to Article XI, Rule 11.06(5)(b), Integration Rule of The Florida Bar, as amended, moves these charges be quashed and in support thereof says:

1. The charges in this cause were directed to be filed by the Board of Governors of The Florida Bar pursuant to Rule

11.05(2), of the Integration Rule, the counsel to prosecute such charges was selected or appointed by the same authority who directed the charges to be filed, the referee to hear such charges was selected by the Board of Governors who had originally recommended such person be appointed a referee pursuant to Rule 11.03(3), Integration Rule, and the report of such referee will be filed with the Board of Governors for their review and approval pursuant to Rule 11.06(9)(c) and therefore the same entity which prefers charges, selects counsel, selects the judge or the referee to hear the cause and then reviews the findings and report of the referee or judge, all contrary to the right of this Respondent to have a fair and impartial trial of charges against him under the provisions of the Florida Constitution, the Constitution of the United States, and the Laws of the State of Florida.

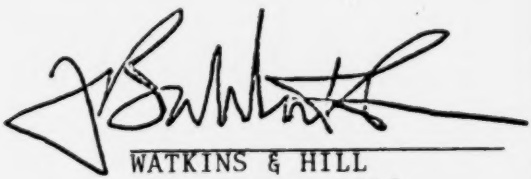
2. The proceedings as described in Paragraph 1 serve to deprive Respondent of his property right, to wit: a license to practice law, without affording him constitutional safeguards and statutory safeguards incident to a fair and impartial hearing.

3. The Board of Governors who initiated and directed the filing of charges in this cause, bar counsel and referee appointed to hear this cause are all practicing attorneys. Some members of the Board of Governors, Bar counsel and the

referee to hear this cause are engaged in the practice of law in the same county or area where Respondent practices and therefore thepecuniary interest of these people disqualifies them from considering and passing on the issue in this cause. (GIBSON, et al. v. BERRYHILL, et al., Supreme Court of the United States, Case No. 71-653, opinion filed May 7, 1973).

4. The charges contained in Count One of the Complaint do not state facts which allege a violation of the Code of Professional Responsibility and fail to show any violation sufficient to warrant any punishment authorized by the Integration Rule of The Florida Bar.

5. Facts alleged in Count Two of this Complaint do not show or constitute any violation of the Code of Professional Responsibility sufficient to warrant any punishment authorized by the Integration Rule of the Florida Bar.

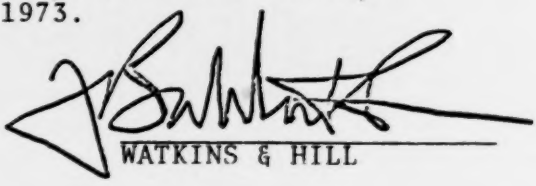


WATKINS & HILL
P.O. Drawer 1814
Tallahassee, Fla.32302

Attys. for Respondent
JAMES D. WELCH

I certify copy of the foregoing Motion to Quash Charges was furnished Alvin Capp,

Counsel for Complainant, 2856 East Oakland Park Boulevard, Fort Lauderdale, Florida, 33306, by mail this 6th day of September, 1973.



WATKINS & HILL

APPENDIX F

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO.17C 71-9 and

CASE NO.17C 72-5

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

ORDER ON MOTIONS, DISCOVERY AND FIXING DATE FOR TAKING TESTIMONY

This matter came on to be heard before HARRY C. FISCHER, Referee, on Wednesday, January 30, 1974, at the office of the Referee; and Complainant having appeared by Bar Counsel, ALVIN CAPP, Esquire and Respondent having appeared by HARRY HELLER, Esquire (of the office of Watkins and Hill, Attorneys at Law) and the Referee having considered the Motions for the appointment

of a Special Referee and the Motion to Quash the Charges, filed by Respondent, and the Brief of Complainant in opposition thereto, and the cases submitted by the Respondent, it is upon due consideration

ORDERED:

1. That the Respondent Brief and Reply to the Complainant's opposition Brief may be received;

2. That the Referee reserves decision on the Motion for Appointment of a Special Referee;

3. That the Motion to Quash the Charges is denied at this time;

4. That the Referee finds that no other Motions of the Complainant or of the Respondent at this time;

5. That the Respondent shall file proper answer with ten (10) days of this Hearing;

6. That the Complainant and Respondent shall file with the Referee and exchange written witness lists and documentary exhibits lists within fifteen (15) days of this Hearing;

7. That the Complainant and the Respondent shall file all their Notices of Depositions with thirty-five (35) days of this Hearing, as well as any other discovery each

may desire. Said Deposition and Discovery shall be completed promptly;

8. That this matter is set for the Taking of Testimony and the Final Hearing on Monday, March 11, 1974, at 9:15 A.M. at the office of the Referee.

DONE AND ORDERED this 30th day of January, 1974.

Harry C. Fischer

HARRY C. FISCHER,
Referee
1201 E. Atlantic Blvd.
Pompano Beach, Fla.33060
Phone:(305)942-6633

I CERTIFY that a copy of the foregoing was mailed on this 30th day of January, 1974, to the following Watkins & Hill, Alvin Capp and the Florida Bar, Tallahassee, Florida.

Harry C. Fischer

HCF/ls
1/30/74
U.P.L. File

HARRY C. FISCHER,
Referee

APPENDIX G

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO. 72-D-5 and

CASE NO. 71-D-9

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

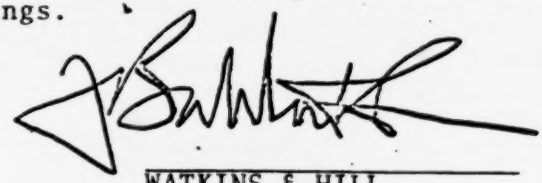
MOTION FOR APPOINTMENT OF SPECIAL REFEREE

Respondent, JAMES D. WELCH, files this his Motion for Appointment of Special Referee and says:

1. Respondent has filed a Motion to Quash Charges in this cause, the principal grounds of which concern the fact the Board of Governors initiates the charges, directs the filing of formal charges, appoints Bar Counsel, appoints or selects

the particular referee, receives and reviews the referee's finding and report.

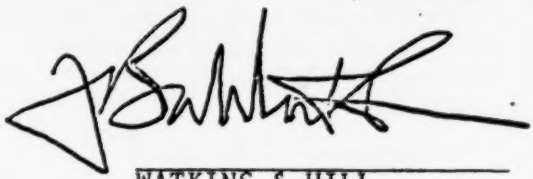
2. Respondent suggests a referee to hear this cause be selected by other than the Board of Governors who directed the filing of the charges and who will receive and review the charges. Respondent suggests the Board of Governors delegate to Hon. Alvin Capp, Bar Counsel in this cause, and counsel for Respondent the assignment of selecting a referee to hear these charges who will be agreeable to all parties to the proceedings.



WATKINS & HILL
P.O. Drawer 1814
Tallahassee, Florida

Attys. for Respondent
JAMES D. WELCH

I certify that a copy of the foregoing Motion for Appointment of Special Referee was furnished Alvin Capp, 2856 East Oakland Park Blvd., Fort Lauderdale, Florida 33306, by mail this 6th day of September, 1973.



WATKINS & HILL

APPENDIX H

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO. 72-D-5 and

CASE NO. 71-D-9

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

ORDER ON MOTION FOR APPOINTMENT OF SPECIAL REFEREE

This matter having previously been heard before HARRY C. FISCHER, Referee, on January 30, 1974, and the Referee having received the Memorandum (Memo for Respondent certified as mailed on the 30 day of January, 1974) it is upon due consideration

ORDERED:

1. That the Motion for Appointment of a Special Referee be and the same is hereby denied.

DONE AND ORDERED this 6th day of February, 1974, at Pompano Beach, Florida.

Harry C. Fischer

HARRY C. FISCHER,
Referee,
1201 East Atlantic Blvd.
Pompano Beach, Fla.33060
Phone:(305)942-6633

I HEREBY CERTIFY that a copy of the foregoing Order on Motion for Appointment of Special Referee, was mailed on the 6th day of February, 1974, to Watkins & Hill, Attorneys for Respondent, P.O. Drawer 1014, Tallahassee, Florida, 32304, Alvin Capp, Esquire, Counsel for Complainant, 2856 E. Oakland Park Blvd., Fort Lauderdale, Fla., 33306, and The Florida Bar, Tallahassee, Florida 32304.

Harry C. Fischer

HARRY C. FISCHER

HCF/njs

APPENDIX I

IN THE SUPREME COURT OF FLORIDA

CASE NO. 45,606

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

PETITION FOR REHEARING

Respondent, JAMES D. WELCH, by his undersigned attorneys, pursuant to the provisions of Rule 3.14, Florida Appellate Rules, files this, his Petition for Rehearing asking this court to withdraw its opinion filed in this cause on January 29, 1975 and to reconsider the matter for the following reasons:

1. The court in its Opinion adopts the conclusion of the Referee, "The Respondent did not testify as to any facts at the hearing." (Op. Pg. 2), which overlooks and fails to consider the documentary evidence introduced by Respondent at

the hearing before the Referee in this cause which, while technically not "testimony", nevertheless, was unrefuted and shows conclusively:

(a) Confirmation by letter originated by Respondent and addressed to complaining witness under date of August 9, 1971 of a prior telephone conversation with complaining witness made on August 7, 1971 in which there had been an understanding or agreement Respondent should receive as additional fees any moneys remaining from the cash bond deposit after deduction of fine and costs. (Ex.K-11).

(b) The deposit of the remainder of the bond moneys after deducting fine and costs was made in Respondent's general account on August 13, 1971 (Respondent's Composite Exhibit No. 1) and no controversy over the right of Respondent to these moneys was present until the complaining witness' letter of September 8, 1971, some 3 to 4 weeks later. (Ex. K-13).

The court in its Opinion must necessarily have overlooked and failed to consider the documentary evidence introduced by Respondent in this cause, which evidence prospectively established the entire defense raised by this Respondent, to wit: This was a matter of civil dispute over the fees agreed upon and could not be a violation of the Code of Professional Responsibility 9-102(a)(2) as charged in the Com-

plaint in this cause and found by the Referee after hearing, when the undisputed testimony and evidence shows the moneys had been deposited in the attorney's bank account at a time when no dispute existed as to the right of the attorney to such funds, and this documentary evidence was not disputed by testimony or other evidence at the hearing before the Referee.

2. The court in its Opinion rejects the contentions of Respondent as to the constitutionality of the present disciplinary proceedings under the Integration Rule of being violative of Secs. 2 and 9, Declaration of Rights, Florida Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution by relying upon the court's earlier opinion in STATE, EX REL. THE FLORIDA BAR V. GRANT, 85 So.2d 232 (Fla. 1956). The Opinion overlooks the fact since rendition of that decision in 1956 no longeris the right to practice law in the courts of this state or this nation solely a matter of grace to be granted or withheld by the state at its whim or choice and "in no sense proprietary," (STATE V. GRANT, supra, Pg. 237) but is now recognized as a privilege with proprietary rights subject to the due process provisions of the Federal and State Constitutions as pointed out in Brief for Respondent, Pgs. 13-19.

The court overlooked the fact the

decision relied upon by it in STATE V. GRANT, supra, did not concern itself with any of the constitutional privileges claimed by this Respondent but was solely concerned with a Motion to Strike a Complaint filed by THE FLORIDA BAR prior to the appointment of Referee and any formal hearings or recommendations of punishment.

3. This court in its Opinion overlooked and failed to consider the Federal Constitutional Rights claimed by this Respondent as being violated through "mixing of functions" inherent in the Integration Rule as presently in effect which violate the Fifth and Fourteenth Amendments to the Federal Constitution and were not matters concerned in nor dealt with in the Opinion relied upon by the court to dispose of Respondent's contentions as to a violation of his State and Federal Constitutional Rights through "mixing of functions" inherent in the Integration Rule procedures.

4. The court overlooks the fact the decision in STATE V. GRANT, supra, which is the basis for this court rejecting Respondent's claim of violation of constitutional rights under the State and Federal Constitution was predicated upon and quotes from as a basis for its conclusion an earlier Opinion by this court in LAMBDIN V. STATE, 150 Fla. 814, 9 So. 2d 192:

"In LAMBDIN V. STATE, supra, this court said:

> "'The administration of justice is a service rendered by the state to the public and exacts of those who engege in it the highest degree of confidence and good faith. No service furnished by the state more vitally affects the public. We practice law by grace, not by right. The privilege to practice law is in no sense proprietary. The state may grant it or refuse it, or it may withdraw it from those who abuse it.'" (Op. Pg. 237)

which is no longer the controlling law relative to proprietary rights in professional licenses. While the first two sentences of the quoted portion of the cited opinion may be true today, the remainder of the paragraph is in conflict with and does violence to recent decisions by the United States Supreme Court and of this court as cited in Brief for Respondent, pages 13 through 19.

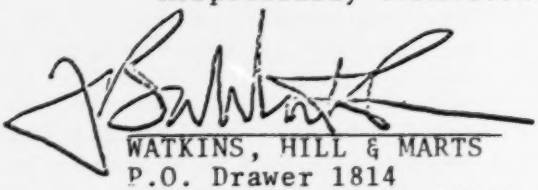
5. The Opinion in this cause overlooks the fact respondent was charged with violation of the Code of Professional Responsibility of Disciplinary Rule 9-102(A)(2) pertaining to preserving identity of funds and property of a client and this Respondent was not charged with nor found guilty

of "misappropriation of client's funds -- the same offense of which he presently stands charged," (Op. Pg. 3), as set forth in this Opinion. It was clear at the hearing before the Referee and at the proceedings before the local Grievance Committee this Respondent stood ready to refund to the client any moneys held by him which a court of competent jurisdiction or an independent committee or proper group might find were not properly held by the attorney. Such appears from the letters andproceedings before the Circuit Grievance Committee which were introduced at the hearing. The record is absent any showing of corrupt intent necessary to support disbarment.

6. The court failed to consider the contentions of Respondent as to his Federal and State Constitutional Rights as affected by the grievance procedures established under the Integration Rule where there is a complete and total "mixing of functions" where the complaining authority initiates charges, appoints the prosecuting attorney, selects the Referee and reviews the findings and such report of the complaining authority comes to this court clothed with a strong presumption of correctness, which rights have undergone substantive changes since the Opinion relied upon by the court was promulgated in 1956. STATE EX REL. THE FLORIDA BAR V. GRANT, 85 So.2d 232 (Fla. 1956).

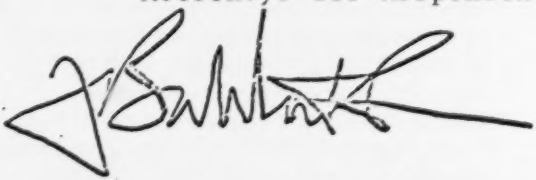
WHEREFORE, Respondent respectfully requests this court withdraw its Opinion filed January 29, 1975 and review this matter giving consideration to the documentary evidence introduced by Respondent at the hearing before the Referee which establishes his contentions in this cause and to further review the present grievance proceedings under the current Integration Rule in the light of subsequent federal and state court decisions applying to the right to practice a profession constitutional safeguards not generally accorded such right in 1956.

Respectfully submitted,



WATKINS, HILL & MARTS
P.O. Drawer 1814
Tallahassee, Fla. 32302

Attorneys for Respondent



I certify that copies of the foregoing Petition for Rehearing were furnished Alvin Capp, Esq., 2856 E. Oakland Park Blvd. Ft. Lauderdale, Florida, and Norman Faulkner, Esq., The Florida Bar, Tallahassee, Florida, 32304, by mail this 12th day of February, 1975.

WATKINS, HILL & MARTS

APPENDIX J

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1975

TUESDAY, MARCH 18, 1975

CASE NO. 45,606

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

On consideration of the Petition for Rehearing filed by attorneys for respondent and response thereto,

IT IS ORDERED that said petition is denied.

ADKINS, C.J., ROBERTS, McCAIN and OVERTON, JJ., and RUDD, Circuit Judge, concur

A True Copy

TEST:

Y

Sid J. White
Clerk, Supreme Court.

CC: Hon. J. Ben Watkin
Hon. Norman A. Faulkner,
Hon. Wilson J. Foster, Jr.
Hon. Alvin Capp

APPENDIX K

IN THE SUPREME COURT OF FLORIDA

CONFIDENTIAL

CASE NO. 72-D-5 and

CASE NO. 71-D-9

THE FLORIDA BAR,

Complainant,

vs.

JAMES D. WELCH,

Respondent.

REPORT OF REFEREE

I. Summary of Proceedings: I report a summary of the proceedings pursuant to the undersigned action duly appointed herein as referee to conduct disciplinary proceedings according to Article XI of the integration rule of the Florida Bar. Hearings were held on dates to be filled in, and a pretrial conference was held on dates to be filled in. The record of the proceedings other than the report I propose will consist of the following:

1. Pleadings, Notices, Motions and Orders

a) Complaint
b) Motion to Quash Charges
c) Motion for Appointment of Special Referee
d) Notice of Hearing
e) Florida Bar's Brief Opposing Respondent's Motion to Quash and to Appoint Special Referee.
f) Order on Motions, Discovery and Fixing Date for taking Testimony by the Referee
g) Memo for Respondent
h) Interrogatories to Complainant
i) Order on Motion for Appointment of Special Referee
j) Answer of Respondent
k) Notice of Taking a Deposition by Capp
l) Motion to Quash Taking a Deposition
m) Witness List in this Case by Respondent
n) Interrogatories to Complainant.

2. Hearings and Exhibits

a) Transcript of 8 April 1974, Final Hearing (160 Pages)
b) Exhibits listed in Transcript.

All of the foregoing are forwarded to The Florida Bar with this report.

The Bar was represented by Alvin Capp, of Fort Lauderdale, Florida, and the respondent was represented by J. Ben Watkins, Esquire, of Tallahassee, Florida, by Harold Heller, Esquire, of Miami, Florida. No continuances were requested and the trial was concluded without adjournment.

II. Findings of Fact as to Each Item of Misconduct of which the Respondent is Charged: After considering all of the pleadings, exhibits and evidence before me I find that:

As to Count One:

1. Respondent agreed to handle matters involving Mr. Keyes' son for a $750.00 fee.

2. Respondent did request and receive funds from a released court cash bond.

3. Mr. Keyes authorized Respondent to subtract the fine ($101.00) if any from the cash bond.

4. Respondent did not place it in a trust account, in escrow, or in an identifiable client fund account.

5. Respondent did unlawfully take and convert to his own use $899.00 belonging to Mr. Keyes.

6. Respondent had no agreement allowing

him to take $899.00.

7. Respondent refused or failed to redeliver the $899.00 to Mr. Keyes.

8. Respondent claimed he did a lot of extra work which made the fee payment he received ($750.00) and the amount he converted ($899.00) a more reasonable fee for the work he did.

9. The Respondent did not testify as to any facts at the Hearing.

In reaching the above findings, I considered the testimony of Mr. Keyes and the exhibits and evidence and am satisfied that the findings are made supported by a clear and convincing preponderance of the evidence in the record.

As to Count Two:

1. Mr. Swanson complained that Resp took a fee of $450.00 from escrow monies without authorization.

2. The Complainant Swanson did not appear or testify.

3. There is in the exhibits in evidence no clear and convincing preponderance of the evidence that Respondent can be found to have violated the strictures upon which the Bar's Complaint is framed, and

a prima facie case has not been presented.

III. Recommendation as to Whether or Not the Respondent Should be Found Guilty of Misconduct Justifying Disciplinary Measures:

I recommend that the Respondent be found not guilty under Count Two.

I recommend that the Respondent be found guilty under Count One as charged in the Complaint and specifically that he be found guilty of violations of his oath as attorney of Article XI of the Integration Rule, Rule 11.02, and D.R. 9-102(A)(2) and D.R. 9-102(B)(4) of the Code of Professional Responsibility, and additional Rule 1 of the former Additional Rule governing Conduct of Attorneys in Florida.

IV. Recommendation as to Disciplinary Measures to be Applied:

I recommend the Respondent be disbarred from the practice of law in Florida.

V. Personal History and Past Disciplinary Measures:

I was not provided with any personal history pertaining to the Respondent.

After finding the accused guilty, I then consider the prior disciplinary hist-

ory of the Respondent and accepted a copy of the Bar Counsel's letter of May 15, 1974, attaching the following:

1. Grievance Committee Report of March 30, 1973 (involving the Keyes and Swanson matters).

2. Prior disbarment proceedings reported by the Supreme Court of Florida in The Florida Bar v. James D. Welch 272 So.2d 139 in which the Court publically reprimanded Respondent andplaced him on three-years probation. This decision was reported December 20,1972.

3. The Reinstatement Order of the Supreme Court reported 173 So.2d 6884.

4. The Disbarment Order in the State of Florida v. James D. Welch in the Circuit Court for Broward County (No. L59,910A;, of November 8, 1969; affirmed by the Supreme Court of Florida, 109 So.2d 767).

5. A letter from Julian Ross, Chairman of Broward Grievance Committee, dated January 27, 1959.

No other disciplinary history is known.

VI. Statement of Costs and Manner in Which Costs Should be Paid:

I find the following costs were reas-

onably incurred by The Florida Bar:

Costs at the Grievance Committee level as reported on statements submitted by Bar Counsel---------- $167.55

Administrative Costs at Referee level on Integration Rule 11.06(9)(a)--- $ 50.00

Bar Counsel copy costs incurred:

Court Reporter costs:

Total costs: _____

It is apparent to me that other costs may have been incurred. It is recommended that all such costs and expenses together with the foregoing itemized amounts should be charged against the Respondent.

Dated this 21 day of May, 1974.

Harry C. Fischer

HARRY C. FISCHER,
Referee

NOTE: Submitted to Staff Counsel in Original and three copies. Not served on Respondent nor Bar Counsel.

HCF/esj
5/21/74

INTEGRATION RULE OF THE FLORIDA BAR

Analysis

Preamble
Art.
I. Name.
II. Membership.
III. Board of Governors.
IV. Officers.
V. Sections and Committees.
VI. Meetings.
VII. By-Laws.
VIII. Dues.
IX. Fiscal Control.
X. Code of Professional Responsibility and Canons of Ethics for Judges.
XI. Rules of Discipline.
XII. The Florida Bar Foundation.
XIII. Amendments.
XIV. Lawyer Reference Services.
XV. Professional Service Corporations.
XVI. Unauthorized Practice of Law.
XVII. Clients' Security Fund.
XVIII. Law School Civil and Criminal Practice Program.
XIX. Group Legal Services.
XX. Law Student Division.

Pursuant to the inherent powers of the Supreme Court of Florida, the Integration Rule of The Florida Bar is hereby amended to read as follows:

Preamble

To inculcate in its members the principles of duty and service to the public, to improve the administration of justice, and to advance the science of jurisprudence, the following principles are expressly adopted by this Court:

Historical Notes, Comments and Judicial Constructions
See West's Florida Statutes Annotated

(a) The Florida Bar, a body created by and existing under the authority of this Court, is charged with the maintenance of the highest standards and obligations of the profession of law, and to that end is vested by this Court, in the exercise of its inherent powers over The Florida Bar as an official arm of this Court, with the necessary powers and authority.

(b) Attorneys admitted to practice law in Florida are a part of the judicial system of Florida and officers of its courts.

(c) Persons of integrity and good character only shall be permitted to practice law in Florida.

(d) This Court has the inherent power and duty to prescribe the qualifications that shall be required for admission to practice law, to admit suitable persons to practice law, to prescribe standards of conduct for lawyers, to determine what constitutes grounds for discipline of lawyers, to discipline for cause attorneys admitted to practice law in Florida, and to revoke the license of every lawyer whose unfitness to practice law has been duly established.

(e) All of the members of The Florida Bar have taken an oath to support the Constitution and the laws of this state and of the United States. As officers of the court, they are charged with obedience to these laws, both in and out of court, and with the duty to observe the high standards of the profession. A license to practice law is a proclamation by this Court that the holder is one to whom the public may entrust professional matters. The lawyer must be true to that trust and to his professional relationship to his client, whether such client be a public body or a private individual.

Article I. Name

The name of the body created by this Rule shall be THE FLORIDA BAR.

Article II. Membership

1. All persons licensed to practice law in this state shall be active members of The Florida Bar immediately upon the issuance of license to practice by this Court.

2. No person shall engage in any way in the practice of law in this state unless such person is an active member of The Flor-

ida Bar in good standing except that a practicing attorney of another state, in good standing, who has professional business in a court of record of this state may, upon motion, be permitted to practice for the purpose of such business only, when it is made to appear that he has associated and appearing with him in such business an active member of The Florida Bar.

3. A member of The Florida Bar in good standing may, upon petition to and with the approval of the Board of Governors, resign from The Florida Bar and, thereupon, unless again admitted, shall not practice law in this state. A member who has resigned may be readmitted upon application to and approval by the Board of Governors. A rejection of such petition may be reviewed by petition to the Supreme Court.

4. Any member of The Florida Bar who shall have attained the age of 65 years, or who shall have practiced law in the State of Florida for 35 years, or who shall be physically disabled to the extent that he cannot engage in the practice of law, may retire from The Florida Bar upon petition to and approval by the Board of Governors. A retired member of The Florida Bar shall not be privileged to practice law or be required to pay dues. A retired member may be reinstated to active membership upon application to and approval by the Board of Governors.

5. A lawyer who has been adjudged insane or mentally incompetent shall be suspended from the practice of law. If an order of restoration is entered by a court having jurisdiction, he may apply to the Board of Governors for reinstatement on the roll of attorneys.

(a) Whenever an attorney is suspended, disbarred, placed on the inactive list, disappears or dies, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the appropriate circuit court, upon proper proof of the fact, may appoint an attorney or attorneys to inventory the files of the subject attorney and to take such action as seems indicated to protect the interests of clients of the subject attorney, as well as the interest of that attorney.

(b) Any attorney so appointed shall not be permitted to disclose any information contained in files so inventoried without the consent of the client to whom such file relates except as necessary to carry out the order to the court which appointed the attorney to make such inventory.

6. It shall be the duty of each member of The Florida Bar immediately to advise the Executive Director of any change of mailing address or military status.

7. Professional service corporations organized under The Professional Service Corporation Act are not prohibited by this article from engaging in the practice of law, so long as such corporation and all of its shareholders, officers, directors, agents and employees who are members of The Florida Bar comply with the applicable provisions of the Integration Rule and By-Laws of The Florida Bar. As amended effective Oct. 11, 1961 (133 So.2d 554); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Article III. Board of Governors

1. The Board of Governors shall be the governing body of The Florida Bar. It shall have the power and duty fully to administer this Rule, including the power to employ necessary personnel, and to publish The Florida Bar Journal, which shall be the official publication of The Florida Bar. The Board shall adopt, amend or rescind the By-Laws in the manner provided in this Rule, and it shall adopt a common seal.

2. The Board of Governors shall consist of the President of The Florida Bar, the President-elect, the President of the Young Lawyers Section, the President-elect of the Young Lawyers Section who shall not be entitled to vote except in the absence of the President of the Young Lawyers Section, and representatives elected by and from the active members of The Florida Bar in each judicial circuit. There shall be one such representative from each judicial circuit and eleven additional circuit representatives who shall be apportioned among and elected from the judicial circuits as follows:

(a) Five of the additional circuit representatives shall be elected by and from the judicial circuit of the State having the largest number of active members of The Florida Bar.

(b) The six remaining additional circuit representatives shall be apportioned among and elected by and from the next six judicial circuits having the largest number of active members of The Florida Bar with each of the described judicial circuits receiving one additional circuit representative.

3. The Executive Director biennially, as of December 15, commencing with the year 1969, from the records of The Florida Bar shall certify to the Clerk of the Supreme Court of Florida the number of active members of The Florida Bar residing in each judicial circuit, and his certificate or a notice thereof shall forthwith be published in The Florida Bar Journal. This certifi-

cate of the Executive Director of The Florida Bar shall be the basis of apportionment of circuit representatives elected to the Board of Governors in the ensuing Bar judicial circuit elections.

4. All circuit representatives elected to the Board of Governors shall serve out the full term for which elected even though a subsequent circuit membership as certified by the Executive Director discloses a reduction in the number of representatives to which any judicial circuit is entitled.

5. The members of the Board of Governors from each judicial circuit shall be nominated and elected by the active members of The Florida Bar residing in such judicial circuit. Each elected member shall hold office for two years and until his successor is elected and qualified. Elections shall be held each year beginning in 1974. The Board of Governors shall, through by-law adopted pursuant to this section, provide for staggered terms with approximately one-half of the circuit representatives being elected each year. The Board of Governors may provide for interim one-year terms for circuit representatives to institute the establishment of staggered terms. The By-Laws shall provide for all nominations and elections of members of the Board of Governors. Newly elected members shall take office at the conclusion of the annual meeting of The Florida Bar following election to office. Any vacancy on the Board of Governors arising in the office of representative from a judicial circuit shall be filled by vote of the remaining members of the Board for the unexpired term, from the active members of The Florida Bar residing in such judicial circuit.

As amended May 19, 1965 (175 So.2d 530); June 7, 1966 (189 So.2d 481); Jan. 17, 1968 (206 So.2d 1); Feb. 26, 1969 (219 So. 2d 33); Feb. 7, 1974 (289 So.2d 5).

Article IV. Officers

1. The officers of The Florida Bar shall be a President, a President-elect, and an Executive Director.

2. A President-elect shall be elected each year in the manner prescribed by the By-Laws, and shall take office as President-elect for the following year at the conclusion of the annual meeting following election to office. The President-elect shall take office as President at the conclusion of the annual meeting following his term as President-elect.

3. In the event the President is absent or unable to act, his duties shall be performed by the President-elect; and in the event of the death or resignation of the President, the President-

12. Compensation and Expenses. No member of the Board of Governors, and no member or officer of The Florida Bar, other than the Executive Director and the employees of The Florida Bar, and except as may be authorized pursuant to Article XI hereof, shall receive compensation, but any such person may, with the approval of the Board of Governors, be reimbursed for reasonable expenses incurred in the performance of services for The Florida Bar. As amended, effective Feb. 17, 1965 (171 So.2d 521).

Article X. Code of Professional Responsibility and Canons of Ethics for Judges

The Code of Professional Responsibility promulgated by the order of the Supreme Court of Florida entered June 3, 1970, and the Canons of Ethics for Judges promulgated by the Supreme Court of Florida on January 27, 1941, as thereafter amended shall constitute a code of ethics applicable to the members of The Florida Bar, together with such amendments to the same as may hereafter be expressly adopted by the Court. Amended effective Oct. 1, 1970 (235 So.2d 723).

The order of the Supreme Court, filed June 3, 1970, amending this Article provides: "This Order shall take effect Oct. 1, 1970; provided that the adoption herein of amended Article X shall in no way affect the applicability of any rules of professional conduct previously promulgated by this Court to acts or omissions occurring prior to such effective date."

An order of the Supreme Court filed July 25, 1973, 281 So.2d 21, promulgated the Code of Judicial Conduct, and provided therein that said code is in lieu of the Canons of Judicial Ethics and shall govern the conduct of all justices and judges effective September 30, 1973.

Article XI. Rules of Discipline

Rule

11.01: **Principles and Definitions.**

(1) Notice and knowledge of rules.
(2) Process.
(3) Definitions.
(a) The accused or accused attorney.
(b) Bar counsel.
(c) The Board, or the Board of Governors.
(d) Complainant or complaining witness.
(e) This Court, or the Court.
(f) Court of this State.
(g) Executive Committee.
(h) Executive Director.
(i) Probable cause.
(j) Referee.
(k) Respondent.
(l) Staff counsel.
(4) Placement on inactive list for incapacity not related to misconduct.

11.02: **Breaches of Discipline.**

(1) Oath.
(2) Code of ethics.
(3) Moral conduct.
(a) Standards.
(b) Crime.
(4) Trust funds and fees.
(a) Trust Accounts Required.
(b) Trust Accounts as Official Records.
(5) Solicitation.
(6) Discipline by foreign jurisdiction.

11.03: **Disciplinary Agencies.**

(1) The Board of Governors of The Florida Bar.
(a) Executive Committee.
(b) Executive Director.
(2) Grievance committees.
(a) Circuit grievance committees.
(b) Special grievance committees.
(c) Membership, appointment and eligibility.
(d) Terms.
(e) Officers.
(f) Oath.
(g) Removal.
(h) Quorum, vote.
(3) Referees.
(4) Staff counsel.
(5) Bar counsel.

Rule

11.03: **Disciplinary Agencies**—Continued
- (6) Jurisdiction and powers.
- (7) Disqualification as trier and attorney for respondent.

11.04: **Grievance Committee Function and Procedure.**
- (1) Purpose.
- (2) Proceedings.
  - (a) Investigation.
  - (b) Non-adversary.
  - (c) No delay for civil or criminal proceedings.
  - (d) Meetings.
  - (e) Bar counsel.
- (3) The accused.
- (4) Testimony of witnesses; contempt.
- (5) Complainant or complaining witness.
- (6) Record and report of grievance committee.
  - (a) No finding of probable cause.
  - (b) Findings of probable cause.
  - (c) Discipline of minor misconduct.

11.05: **Board of Governors Function and Procedure.**
- (1) Review of grievance committee report.
- (2) Finding of probable cause.
- (3) Finding of no probable cause.
- (4) Appointment of bar counsel.
- (5) Control of proceedings.
- (6) Recording board voting.

11.06: **Trial by Referee.**
- (1) Venue.
- (2) Style of proceedings.
- (3) Nature of proceedings.
  - (a) Administrative in character.
  - (b) Discovery.
- (4) Bar counsel.
- (5) Pleadings.
  - (a) Complaint; consolidation and severance.
    - (i) Filing.
    - (ii) Content.
    - (iii) Joinder of charges and respondents; severance.
  - (b) Answer and motion.
  - (c) Reply.
  - (d) Disposition of motions.
  - (e) Filing and service of pleading.
    - (i) Prior to appointment of referee.
    - (ii) After appointment of referee.
  - (f) Amendment.
  - (g) Expediting the trial.
  - (h) Disqualification of referee.
- (6) Notice of final hearing.
- (7) The respondent.
- (8) Complaining witness.

Rule

11.06: **Trial by Referee**--Continued
- (9) Referee's report.
  - (a) Contents of report.
  - (b) Filing.
  - (c) Action by the Board of Governors.
- (10) The record.
  - (a) Reporting of testimony.
  - (b) Contents.
- (11) Plea of guilty by accused or respondent.
  - (a) Before filing of complaint.
  - (b) After filing of complaint.
  - (c) Unconditional.
  - (d) Procedure.
- (12) Private reprimand.

11.07: **Discipline upon Conviction.**
- (1) Determination or judgment of guilt.
- (2) Suspension by judgment (Florida).
  - (a) Petition to modify or terminate suspension.
  - (b) Continuation of suspension until final disp tion.
  - (c) Termination of suspension.
- (3) Suspension by judgment (other than by state cou
- (4) Disciplinary judgment after conviction.

11.08: **Resignation Pending Disciplinary Proceedings.**
- (1) Definition.
- (2) Petition for leave to resign.
- (3) Judgment.
- (4) Delay of disciplinary proceedings.
- (5)

11.09: **Review by Supreme Court.**
- (1) Right of review.
- (2) Appointment of bar counsel.
- (3) Procedure for review.
  - (a)
  - (b) Record on review.
  - (c) Briefs.
  - (d) Oral argument.
  - (e) Burden.
  - (f) Judgment of Supreme Court.
- (4) Precedence of proceedings.
- (5) Extraordinary writs.
- (6) Florida Appellate Rules.
- (7) Contempt by accused or respondent.
- (8)

11.10: **Discipline by Supreme Court.**
- (1) Probation.
- (2) Public reprimand.
- (3) Suspension.
- (4) Disbarment.
- (5) Temporary suspension and probation.

Rule

11.11: **Reinstatement.**
- (1) Petitions, form, contents, fingerprints.
  - (a) Filing.
  - (b) Form and exhibits.
- (2) Deposit for cost.
- (3) Reference of petition for hearing.
- (4) Attorney for the Bar.
- (5) Procedure.
- (6) Hearing; notice; evidence.
  - (a) Notice.
  - (b) Appearance.
  - (c) Failure of petitioner to be examined.
- (7) Prompt hearing; report.
- (8) Notice of reinstatement committee's or referee's report.
- (9) Statement in opposition or support.
- (10) Judgment.
- (11) Successive petitions.

11.12: **Confidential Nature of Proceedings.**
- (1) Public record.
  - (a) Request of accused or respondent.
  - (b) Circuit court.
  - (c) Judgment of suspension or disbarment.
  - (d) Review by Supreme Court.
- (2) Resignation pending disciplinary proceedings.
- (3) Evidence of crime.
- (4) Information concerning status of proceeding.
- (5) Additional waiver or confidentiality in matters involving commission of a crime, unfitness to practice law and great public interest.

11.13: **Additional Rules of Procedure.**
- (1) Time is directory.
- (2) Notice in lieu of process.
- (3) Subpoenas.
  - (a) Referees.
  - (b) Grievance committees.
  - (c) Reinstatement committees.
  - (d) Board of Governors.
  - (e) Confidential proceedings.
  - (f) Contempt.
- (4) Oath of witnesses.
- (5) Contempt.
  - (a) Petition for rule to show cause.
  - (b) Confidentiality.
  - (c) Appellate review.
- (6) Consent judgment.
  - (a) Before referee and Bar counsel are appointed.
  - (b) After Appointment of Referee and Bar Counsel.

Rule

11.14: Disciplinary Proceedings in Circuit Courts.
(1) Disciplinary matters in district courts of appeal and circuit courts.
(2) Copy served upon accused.
(3) Trial before a circuit judge.
(4) Judgment filed in Supreme Court.
(5) Petition for appellate review.
(6) Duty to expedite proceedings.
(7) Concurrent jurisdiction of The Florida Bar.
(8) Readmission or Reinstatement.

11.15: Statutes Superseded.

Article XI. Rules of Discipline

The exclusive jurisdiction of the Supreme Court over the discipline of persons admitted to the practice of law shall be administered in the following manner subject to the supervision and review of the Court.

Rule 11.01: Principles and Definitions

(1) Notice and knowledge of rules. Every member of The Florida Bar and every attorney of another state who is admitted to practice for the purpose of a specific case before a court of record of this state under Section 2 of Article II of the Integration Rule is within the jurisdiction of this Court and its agencies under this Rule and is charged with notice and held to know the provisions of this Rule and the standards of ethical and professional conduct prescribed by this Court. Jurisdiction over an attorney of another state who is not a member of The Florida Bar shall be limited to his conduct as an attorney in relation to the business for which he was permitted to practice in this state, and his privilege in the future to practice law in the State of Florida.

(2) Process. Every member of The Florida Bar is charged with notice of the provisions of Section 6 of Article II relating to change of mailing address or military status and that mailing by registered or certified mail of papers or notices prescribed in these rules to the last mailing address of an attorney as shown by the official records in the office of the Executive Director of The Florida Bar shall be sufficient notice and service unless this court shall direct otherwise. Every attorney of another state who is permitted to practice for the purpose of a specific case before a court of record of this state may be served by regis-

tered or certified mail addressed to said attorney in care of the Florida attorney who was associated or appeared with him in the specific case for which the out-of-state attorney was permitted to practice, or addressed to said attorney at any address listed by him in the pleadings in such case.

(3) **Definitions.** Wherever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:

(a) The accused or accused attorney: a member of The Florida Bar who has been accused of misconduct or whose conduct is under investigation, but as to which conduct there has been no finding of either probable cause or no probable cause.

(b) Bar counsel: a member of The Florida Bar appointed to represent The Florida Bar in any proceeding under these rules.

(c) The Board, or the Board of Governors: The Board of Governors of The Florida Bar.

(d) Complainant or complaining witness: any person who has complained of the conduct of any member of The Florida Bar to any officer or agency of The Florida Bar.

(e) This court, or the court: The Supreme Court of the State of Florida.

(f) Court of this state: a state court authorized and established by the Constitution or laws of the State of Florida.

(g) Executive Committee: The Executive Committee of the Board of Governors of The Florida Bar.

(h) Executive Director: the Executive Director of The Florida Bar.

(i) Probable cause: a finding by an authorized agency that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action.

(j) Referee: a member of The Florida Bar appointed to conduct proceedings as provided under these rules.

(k) Respondent: a member of The Florida Bar against whom there has been a finding of probable cause.

(*l*) Staff counsel: an employee of The Florida Bar elsewhere authorized. When used in this rule, the term shall include associate or assistant staff counsel.

(4) **Placement on inactive list for incapacity not related to misconduct.** Whenever an attorney who has not been adjudged incompetent is incapable of practicing law because of physical or mental illness, incapacity or other infirmity, he may be placed upon an inactive list and shall refrain from the practice of law for such reason even though no misconduct on his part is alleged or

proved. Proceedings with a view of placing an attorney on the inactive list under this section, shall be processed under Article XI in the same manner as proceedings involving acts of misconduct. A member who has been placed on such inactive list may be readmitted upon application to and approval by the Board of Governors. A rejection of such petition may be reviewed by petition to the Supreme Court.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.02: Breaches of Discipline

The following principles, among others expressly adopted by this Court, shall govern the conduct of members of The Florida Bar in their capacity as attorneys and shall govern all proceedings for discipline of such members: a license to practice law confers no vested right to the holder thereof, but is a conditional privilege revokable for cause. The primary purpose of discipline of attorneys is the protection of the public, and the administration of justice, as well as protection of the legal profession through the discipline of members of the Bar. It is the responsibility of this Court to purge the Bar of those unworthy to practice law in this State and it is the obligation of The Florida Bar and the individual members thereof to give unlimited cooperation and assistance to this Court in the discharge of this responsibility. The Florida Bar is expressly delegated the authority, power and duty to maintain high ethical standards and to take such proceedings as authorized in these rules to insure such standards in the Bar of Florida.

(1) Oath. Violation of the oath taken by an attorney to support the Constitutions of the United States and the State of Florida is ground for disciplinary action. Membership in, alliance with, or support of the Communist Party of any organization, group or party advocating or dedicated to the overthrow of the government by violence or by any means in violation of the Constitution of the United States or constitution of this state shall be a violation of the oath.

(2) Code of ethics. Violation of the Code of Professional Responsibility as adopted by Article X of the Integration Rule is a cause for discipline.

(3) Moral conduct.

(a) *Standards.* The standards of professional conduct to be observed by members of the Bar are not limited to the observance

of rules and avoidance of prohibitive acts, and the enumeration herein of certain categories of misconduct as constituting grounds for discipline shall not be deemed to be all-inclusive nor shall the failure to specify any particular act of misconduct be construed as tolerance thereof. The commission by a lawyer of any act contrary to honesty, justice or good morals, whether the act is committed in the course of his relations as an attorney or otherwise, whether committed within or outside the State of Florida, and whether or not the act is a felony or misdemeanor, constitutes a cause for discipline.

(b) *Crime.* If the alleged misconduct constitutes a felony or misdemeanor, The Florida Bar may initiate disciplinary action whether or not the accused attorney has been tried, acquitted or convicted in a court for the alleged criminal offense; however, the Board of Governors may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against an accused attorney if the Board believes that prosecution thereof might tend to prejudice the accused attorney in his defense or the state in the prosecution of the criminal proceedings.

(4) **Trust funds and fees.** Money or other property entrusted to an attorney for a specific purpose, including advances for costs and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or set-off for attorney fees, and a refusal to account for and deliver over such property and money upon demand shall be deemed a conversion. This is not to preclude the retention of money or other property upon which the lawyer has a valid lien for his services or to preclude the payment of agreed fees from the proceeds of transactions or collections. Controversies as to the amount of fees are not grounds for disciplinary proceedings unless the amount demanded is clearly excessive, extortionate or the demand is fraudulent.

In a controversy alleging a clearly excessive, extortionate or fraudulent fee, announced willingness of an attorney to submit a dispute as to the amount of a fee to a competent tribunal for determination may be considered in any determination as to intent or in mitigation of discipline; provided such willingness shall not preclude admission of any other relevant admissible evidence relating to such controversy, including evidence as to the withholding of funds or property of the client, or to other injury to the client occasioned by such controversy.

(a) *Trust Accounts Required.* Any bank account maintained by a member of The Florida Bar to comply with Disciplinary Rule 9–102 of the Code of Professional Responsibility is and shall be clearly labeled and designated as a trust account. Any safe deposit box used in connection with the practice of law in Florida maintained by a member of The Florida Bar to comply with said Disciplinary Rule 9–102 shall be located in this state (unless the client otherwise consents in writing) and the member of The Florida Bar shall advise any institution in which such deposit box is located that the contents of the same may include property of clients.

(b) *Trust Accounts as Official Records.* A member of The Florida Bar shall preserve or cause to be preserved the records of all bank accounts or other records pertaining to the funds or property of a client maintained by him in compliance with Disciplinary Rule 9–102 for a period of not less than six years subsequent to the last transaction pertaining to the same or subsequent to the final conclusion of the representation of a client relative to such funds or property, whichever shall last occur. Such records shall include checkbooks, cancelled checks, check stubs, vouchers, ledgers and journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds, or similar equivalent records clearly and expressly reflecting the date, amount, source and reason for all receipts, withdrawals, deliveries and disbursements of the funds or property of a client. All of such records shall be deemed to be kept pursuant to the Integration Rule of The Florida Bar, as a specific prerequisite to the right to receive, deliver and disburse funds or property of a client, and to have a public aspect relating to the protection of clients and to fitness of a member of The Florida Bar to practice law. In any instance of an alleged violation by a member of The Florida Bar of this Rule 11.02(4) or of any Disciplinary Rule of the Code of Professional Responsibility such records insofar as they may relate in any way to the transaction, occurrence or client in question shall be produced by the member of The Florida Bar for inspection, audit and copying by a designated representative of The Florida Bar upon the direction of this court or any judge of this state acting under Rule 11.14 or of a grievance committee or of the Board of Governors if acting pursuant to Rule 11.05(2) or of a referee. Such records or copies thereof shall be admissible in evidence in any proceeding under this Rule; provided notice of such intended use shall be given to any client involved, if practicable, unless such client is already aware of such intended use, and up-

on good cause shown by such client the admission of the same shall be under such conditions as shall be reasonably calculated thereafter to protect the confidences of such client in the event that the proceedings otherwise become public records pursuant to Rule 11.12. Permissible means of protection shall not prejudice the respondent or accused attorney, and may include but are not limited to excision, in camera production, retention in sealed envelopes, or similar devices. Failure to maintain such records or to produce them upon such direction shall constitute grounds for disciplinary action under the Integration Rule without regard to any other matter. The cost of any audit or investigation necessitated by such failure may be taxed against a respondent.

(5) Solicitation. The solicitation of professional employment by advertisement, runners, solicitors, investigators, or in any other manner shall constitute grounds for disciplinary action. Payment of compensation shall not be a necessary element of proof of solicitation.

(6) Discipline by foreign jurisdiction. A final adjudication by a court or other authorized disciplinary agency of another jurisdiction, state or federal, in a disciplinary proceeding that an attorney licensed to practice in that jurisdiction is guilty of misconduct justifying disciplinary action shall be considered as conclusive proof of such misconduct in a disciplinary proceeding under this rule. In such cases the adjudication of misconduct shall be sufficient basis for the filing of a complaint by The Florida Bar and assignment for hearing before a referee without a finding of probable cause under these rules.

A member of The Florida Bar disbarred or suspended from the practice of law by a court or other authorized disciplinary agency of another state or by a federal court shall within 30 days after the effective date of the disbarment or suspension file with this court a copy of the order or judgment effecting such disbarment or suspension.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.03: Disciplinary Agencies

The jurisdiction of the Supreme Court shall be administered in the manner hereinafter stated. The following entities are hereby designated as agencies of the Supreme Court for this purpose and with the following responsibilities, jurisdiction and powers:

(1) The Board of Governors of The Florida Bar. The Board of Governors of The Florida Bar is assigned the responsibility of maintaining high ethical standards among all its members. The Board of Governors of The Florida Bar shall supervise and conduct disciplinary proceedings in accordance with the provisions of these rules and by-laws of The Florida Bar not inconsistent with these rules.

(a) *Executive Committee.* All acts and discretion required of the Board of Governors under these Rules of Discipline may be exercised by its Executive Committee between meetings of the Board of Governors as may from time to time be authorized by standing Board of Governors' policies.

(b) *Executive Director.* All matters to be filed with or served upon the Board of Governors shall be addressed to the Board of Governors and filed with the Executive Director. The Executive Director shall be the custodian of the official records of The Florida Bar.

(2) Grievance committees. There shall be such grievance committees as are herein provided, each of which shall have the authority and jurisdiction required to perform the functions hereinafter assigned to it, and which shall be constituted and appointed as follows:

(a) *Circuit grievance committees.* There shall be not less than one grievance committee in each judicial circuit of this state, and as many more in each judicial circuit as shall be found desirable by the Board of Governors. Such committees shall be designated as Judicial Circuit Grievance Committees, and in circuits having more than one committee they shall be identified by alphabetical designation in the order of creation such as "First Judicial Circuit Grievance Committee 'A' ", "First Judicial Circuit Grievance Committee 'B' ", and so forth. Such committees shall be continuing bodies notwithstanding changes in membership and they shall have jurisdiction and the power to proceed in all matters properly before them.

(b) *Special grievance committees.* The Board of Governors may from time to time appoint special grievance committees for the purpose of such investigations as may be assigned in accordance with these rules. Such committees shall continue only until the completion of tasks assigned, and they shall have jurisdiction and power to proceed in all matters so assigned to them. All provisions concerning grievance committees shall be applicable to special grievance committees except those concerning terms of office and other restrictions thereon as may be imposed by the

Board of Governors. Any vacancies occurring in such a committee shall be filled by the Board of Governors, and such changes in members shall not affect the jurisdiction and power of the committee to proceed in all matters properly before it.

(c) *Membership, appointment and eligibility.* Each grievance committee shall be appointed by the Board of Governors and shall consist of not less than three members of The Florida Bar, each of whom shall have been a member of The Florida Bar for not less than five years.

(d) *Terms.* The terms of the members shall begin on the first day of July and shall end on the next succeeding 30th day of June or until such time as their successors are appointed and qualified. Continuous service of a member shall not exceed three (3) years, nor shall any member be reappointed for a period of three (3) years after the end of his term; provided, however, the expiration of the term of any member shall not disqualify such member from concluding any investigation then pending before him. The limitation on continuous service shall be applicable to terms commencing after June 30, 1970.

(e) *Officers.* There shall be a chairman designated by the Board of Governors and a vice chairman and secretary designated by the chairman of each committee.

(f) *Oath.* Each new member of a committee shall subscribe to an oath to fulfill the duties of his office. Such oaths shall be filed with the Executive Director and placed with the official records of The Florida Bar.

(g) *Removal.* Any member may be removed from his office by the Board of Governors.

(h) *Quorum, vote.* A majority of a committee but not less than three members shall constitute a quorum. All findings of probable cause and of guilt of minor misconduct shall be made by affirmative vote of a majority of the committee present, which majority must number at least three members. The number of committee members voting for or against the committee report shall be reflected in the report. Minority reports may be filed.

(3) **Referees.** The Board of Governors shall annually or as often as necessary recommend members of The Florida Bar to this court to act as referees in disciplinary proceedings. This court will certify annually or as often as necessary a panel of those approved to act as referees. All retired Supreme Court, district court of appeal and circuit judges shall be eligible, with their consent, to serve as referee.

(4) Staff counsel. The Board of Governors may employ staff counsel and assistant staff counsel for The Florida Bar to perform such duties under the direction of the Executive Director as may be assigned.

(5) Bar counsel. The Board of Governors from time to time shall designate a panel or panels of members of The Florida Bar to serve as bar counsel to represent The Florida Bar in such disciplinary proceedings as the Board of Governors may direct. Bar Counsel shall not be a member of the Board of Governors, a grievance committee or a member of the panel of referees, except that a member of the Board of Governors may represent The Florida Bar on any review proceeding under Rule 11.09.

(6) Jurisdiction and powers. The Board of Governors, grievance committees and referees have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or cause, including the power to compel the attendance of witnesses, to take or cause to be taken the deposition of witnesses and to order the production of books, records or other documentary evidence. Each member of such agencies has power to administer oaths and affirmations to witnesses in any matter within the jurisdiction of the agency.

(7) Disqualification as trier and attorney for respondent. No member or former member of the Board of Governors and no employee or former employee of The Florida Bar shall represent any party other than The Florida Bar in proceedings provided for in these rules until at least three (3) years from the date of expiration of the term for which he was appointed or elected or subsequent to the date of the termination of his employment; nor shall any member or former member of any grievance committee represent an accused attorney or act as referee in any such proceeding during the term for which he was appointed and for one year thereafter; nor in any case shall a member or former member of a grievance committee or a referee represent an accused attorney or act as bar counsel in any proceeding investigated or heard to any extent before him in such offices.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.01: Grievance Committee Function and Procedure

(1) Purpose. The purpose and function of a grievance committee is to conduct investigations of alleged misconduct of a member of The Florida Bar justifying disciplinary action and to

determine whether or not to make a finding of probable cause. A grievance committee may discipline for minor misconduct.

(2) Proceedings

(a) *Investigation.* A grievance committee is required to consider all charges of misconduct whether based upon a written complaint or not.

(b) *Nonadversary.* The proceedings of such grievance committees may be informal and shall not assume the character of an adversary proceeding. The committee shall not be bound by the Rules of Evidence.

(c) *No delay for civil or criminal proceedings.* An investigation shall not be deferred or suspended without the approval of the Board of Governors even though the accused is made a party of civil litigation, or is a defendant or is acquitted in a criminal action, notwithstanding that either of such proceedings involves the subject matter of the investigation. The acquittal of an accused in a criminal proceeding shall not necessarily be a bar to disciplinary proceedings nor shall the findings, judgment or decree of any court in civil proceedings necessarily be binding in disciplinary proceedings.

(d) *Meetings.* Grievance committees shall meet at regularly scheduled times, not less frequently than quarterly each year, and either the chairman or secretary may call special meetings.

(e) *Bar counsel.* A grievance committee may request the President of The Florida Bar to appoint bar counsel at any stage of an investigation to assist the grievance committee.

(3) The accused. The accused may be required to testify and to produce evidence as any other witness unless he claims a privilege or right properly available to him under applicable federal or state law, and when so required he may be accompanied by counsel. Before any finding of probable cause or private reprimand is made the accused shall be advised in general terms the nature of the conduct which is being investigated, and he shall be given an opportunity to make a statement personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. Unless found to be impractical by the chairman of the grievance committee due to unreasonable delay or other good cause, the accused shall be granted the right to be present at any grievance committee hearing when evidence is to be presented to the committee, to face his accuser, to call witnesses, and to cross examine subject to reasonable limitation.

(4) Testimony of witnesses; contempt. Unless he claims a privilege or right properly available to him under applicable law, the accused attorney or any other person who is subpoenaed to appear and give testimony or produce books, papers or documents, and who refuses to appear or produce such books, papers or documents before the grievance committee or who, having been duly sworn to testify, refuses to answer any proper question, may be cited for contempt of this court. Any contempt proceedings instituted or prosecuted during the progress of an investigation or trial covered by the confidential rule shall be conducted in a manner consistent with such rule and shall not be made public except under conditions prescribed in such rule.

(5) Complainant or complaining witness. The complainant or complaining witness is not a party to the disciplinary proceeding and shall have no right to be present during the grievance committee proceedings except when called to give evidence and when so called may be accompanied by counsel. Neither the complainant nor his counsel shall have the right of confrontation or cross-examination of the accused or any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise, nor restitution will excuse the completion of an investigation. The complaining witness shall have no right of appeal.

(6) Record and report of grievance committee.

(a) *No finding of probable cause.* If a grievance committee upon termination of its investigation does not find probable cause, the committee shall dispose of its file in the manner directed by the Board of Governors. If the grievance committee has notified the accused of the investigation, then the committee shall notify the accused of the action of the committee. The failure of a grievance committee to find probable cause shall not preclude further proceedings.

(b) *Findings of probable cause.* If a grievance committee finds probable cause, the committee shall prepare a record of its investigation and a report and file the same with the Executive Director, the report being filed in duplicate. The record and report shall be in such form and with such content as shall be prescribed by the Board of Governors. Such record and report shall be reviewed by staff counsel. Should staff counsel question the grievance committee's finding of probable cause, further proceedings shall be suspended and the matter referred to the Board of Governors or returned to the grievance committee for further action. When a finding of probable cause by a grievance committee is not referred to the Board of Governors, or returned to

the grievance committee for further action the Executive Director shall furnish a copy of the report to the accused, and a copy of the record shall be made available to the accused at his expense.

(c) *Discipline of minor misconduct.*

(i) If a grievance committee finds an accused guilty of minor misconduct or if an accused shall admit his guilt of minor misconduct by a writing filed with a grievance committee, the grievance committee may enter an order providing for a private reprimand and for the taxing of costs against him. The report ordering a private reprimand shall be forwarded through a Board of Governors member for that circuit to staff counsel for review. If staff counsel does not return the report to the grievance committee to remedy a defect therein, he shall present the same to the Board of Governors or Executive Committee with his recommendations. If the report of a grievance committee imposing a private reprimand is approved by the Board of Governors or Executive Committee the report shall then be served on the accused by the Executive Director or staff counsel. The order of private reprimand shall become final unless rejected by the accused attorney within 15 days after service upon him. If rejected by the accused, the report shall be referred to bar counsel and referee for trial on complaint to be prepared by bar counsel as in the case of a finding of probable cause.

(ii) Minor misconduct for which a private reprimand by a grievance committee might be appropriate is a relative rather than a precise term. In the absence of unusual circumstances expressly described in detail in the grievance committee report misconduct shall not be regarded as minor if any of the following conditions exist:

(a) The accused has been disciplined by private reprimand more than once in the preceding ten years.

(b) The accused has been disciplined by a measure more severe than a private reprimand in the past ten years.

(c) The accused is the subject of other pending disciplinary proceedings at the time of the order.

(d) The misconduct involves any of the following: dishonesty, misrepresentation, deceit, fraud, commission of a felony, failure to account for money or property, performance of the offending act with knowledge and intent that such would breach the standards of ethical and professional conduct, misconduct similar to that for which the accused has been previously punished.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.05: Board of Governors Function and Procedure

No formal complaint shall be filed by The Florida Bar in disciplinary proceedings against a member of the Bar unless either a grievance committee or the Board of Governors shall first find that probable cause exists to believe that the accused is guilty of misconduct justifying disciplinary action or unless the accused has been determined or adjudged to be guilty of the commission of a felony. The finding of probable cause shall be made by a grievance committee as hereinbefore provided or by the Board of Governors as hereinafter provided.

(1) Review of grievance committee report. Whenever a grievance matter is referred to the Board of Governors by staff counsel, the Board shall review the record and report filed by the grievance committee and may either issue a private reprimand which the accused may thereafter reject in the same manner as a private reprimand by a grievance committee, confirm the finding of probable cause, reverse the grievance committee and find no probable cause, or return the record and report to the grievance committee for further proceedings. If the Board of Governors shall find no probable cause, the Executive Director shall notify the accused attorney, the grievance committee and may notify the complaining witness. When a grievance committee report imposing a private reprimand has been referred to it the Board of Governors or Executive Committee may affirm the reprimand, find probable cause or find no probable cause.

(2) Finding of probable cause. The Board of Governors of The Florida Bar, sua sponte or on the basis of the report of any regular or special grievance committee or on the recommendation and report of bar counsel, may by majority vote find probable cause and direct the filing of a formal complaint against an attorney as hereinafter provided. Provided, however, that if such finding is not based upon grievance committee investigation or report of bar counsel in pending proceedings against the accused, then before such finding is made the accused shall be advised in general terms the nature of the conduct which is being considered, and he shall be given an opportunity to make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. The accused shall have no right to present other testimony

or evidence, and he shall have no right of confrontation or cross-examination.

(3) Finding of no probable cause. A finding of no probable cause by the Board of Governors shall be final and after such finding no further proceedings shall be had in the matter by The Florida Bar.

(4) Appointment of bar counsel. When a grievance committee finding of probable cause is not referred to the Board of Governors, the Executive Director shall request the President of The Florida Bar to appoint bar counsel unless bar counsel has been appointed, and to assign a referee to try the cause. The President of The Florida Bar will exercise his discretion in making the appointments. If probable cause is found by the Board of Governors and bar counsel or the referee has not been appointed, the appointment may be made by the Board of Governors.

(5) Control of proceedings. Bar counsel, however appointed, at all times shall be subject to the direction of the Board of Governors. In the exercise of its discretion as the governing body of The Florida Bar the Board of Governors at all times has the power to terminate disciplinary proceedings before a referee, whether such proceedings have been instituted upon a finding of probable cause by the Board of Governors or a grievance committee. The Board may defer or withhold prosecution when, in the opinion of the Board, further proceedings would not be in the interest of the public or The Florida Bar.

(6) Recording board voting. Whenever requested by a member of the Board of Governors who is present to vote, the numerical votes of the Board for, against or abstaining on a disciplinary question before the Board shall be recorded in the minutes of the meeting.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.06: Trial by Referee

When a finding has been made by a grievance committee or by the Board of Governors that there is cause to believe that a member of The Florida Bar is guilty of misconduct justifying disciplinary action, and such finding of probable cause has been assigned for trial before a referee, the proceeding thereafter shall be an adversary proceeding in which the accused is the respondent and which shall be conducted as follows:

(1) Venue. The trial shall be held in the county in which an alleged offense occurred, or in the county where the respondent resides or practices law or last practiced law in Florida, whichever shall be designated by the agency finding probable cause; provided, however that if the respondent is not a resident of Florida and the alleged offense is not committed in Florida, the trial shall be held in a county designated by the agency finding probable cause; and provided further that the trial may be held in any county by agreement of the parties.

(2) Style of proceedings. All proceedings instituted by The Florida Bar shall be styled "The Florida Bar, complainant v. (name of respondent), respondent."

(3) Nature of proceedings.

(a) *Administrative in character.* A disciplinary proceeding is neither civil nor criminal but is a quasijudicial administrative proceeding.

(b) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

(4) Bar counsel. Bar counsel shall make such investigation as in his opinion is necessary and shall prepare and prosecute with utmost diligence any case assigned to him. Assistant bar counsel shall serve under the general supervision of bar counsel.

(5) Pleadings. Pleadings may be informal and shall comply with the following requirements:

(a) *Complaint; consolidation and severance.*

(i) Filing. The complaint against the respondent shall be filed by bar counsel not later than 30 days after appointment of a referee unless the complaint has been previously prepared and filed by staff counsel.

(ii) Content. The complaint shall set forth the particular act or acts of conduct for which the attorney is sought to be disciplined.

(iii) Joinder of charges and respondents; severance. A complaint may embrace any number of charges against one or more respondents, and charges may be against any one or any number of respondents; but a severance may be granted by the referee when the ends of justice require it.

(b) *Answer and motion.* Respondent may answer the complaint, and as a part thereof or by separate motion may challenge only the sufficiency of the complaint and the jurisdiction

of the forum. All other defenses shall be incorporated in respondent's answer. All pleadings of the respondent must be filed within twenty (20) days of service of a copy of the complaint upon him.

(c) *Reply.* If respondent's answer shall contain any new matter or affirmative defense, a reply thereto may be filed within ten (10) days of the date of service of a copy upon bar counsel, but failure to file such a reply shall not prejudice The Florida Bar. All affirmative allegations in the respondent's answer shall be considered as denied by The Florida Bar.

(d) *Disposition of motions.* Hearings upon motions may be deferred until the final hearing; and whenever heard, rulings thereon may be reserved until termination of the final hearing.

(e) *Filing and service of pleading.*

(i) Prior to appointment of referee. Any pleadings filed in a case prior to appointment of a referee shall be filed with the Executive Director in quadruplicate and shall bear a certificate of service showing parties upon whom service of copies has been made. On appointment of referee, the Executive Director shall notify the parties of such appointment and forward all pleadings theretofore filed with him to the referee for action.

(ii) After appointment of referee. All pleadings, motions, notices and orders filed after appointment of a referee shall be filed with the referee and shall bear a certificate of service showing service of a copy on the staff counsel of The Florida Bar and on all interested parties to the proceedings.

(f) *Amendment.* Pleadings may be amended by order of the referee, and a reasonable time shall be given within which to respond thereto.

(g) *Expediting the trial.* If it shall be made to appear that the date of final hearing should be expedited in the public interest, the referee may, in his discretion, shorten the time for filing pleadings and the notice requirements as provided in this rule.

(h) *Disqualification of referee.* Upon motion of either party a referee may be disqualified from service in the same manner and to the same extent that a circuit judge may be disqualified under existing law from acting in a judicial capacity. In the event of disqualification the Board of Governors shall appoint a successor.

(6) Notice of final hearing. The cause may be set down for trial by either party or the referee upon not less than ten (10) days notice. The trial shall be held as soon as possible following the expiration of ten (10) days from the filing of respondent's answer, or if no answer is filed, then from the date when such answer is due.

(7) The respondent. Unless he claims a privilege or right properly available to him under applicable federal or state law, the respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent attorney is subpoenaed to appear and give testimony or to produce books, papers or documents, and he refuses to appear or to produce such books, papers, or documents, or, having been duly sworn to testify, he refuses to answer any proper question, he may be cited for contempt of the court.

(8) Complaining witness. The complaining witness shall have no right other than those of any other witness; he has no right to be present during a hearing or trial but he may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise nor restitution will excuse failure to complete any trial.

(9) Referee's report.

(a) *Contents of report.* Within thirty (30) days after the conclusion of a trial before a referee or ten (10) days after the referee receives the transcripts of all hearings, whichever is later, or within such extended period of time as may be allowed by the President of The Florida Bar for good cause shown, the referee shall make a report and enter it as part of the record, but failure to enter the report in the time prescribed shall not deprive the referee of jurisdiction. The referee's report shall include (1) a finding of fact as to each item of misconduct of which the respondent is charged, (2) recommendations as to whether or not the respondent should be found guilty of misconduct justifying disciplinary measures, (3) recommendations as to the disciplinary measures to be applied, (4) a statement of any past disciplinary measures as to the respondent which are on record with the Executive Director of The Florida Bar or which otherwise become known to the referee through evidence properly admitted by the referee during the course of the proceedings. After a finding of guilt all evidence of prior disciplin-

ary measures may be offered by bar counsel subject to appropriate objection or explanation by respondent, and (5) a statement of costs of the proceedings and recommendations as to the manner in which costs should be taxed. The costs shall include court reporters' fees, copy costs, witness fees and traveling expenses and reasonable traveling and out-of-pocket expenses of the referee and bar counsel, if any. Costs shall also include a $50 charge for administrative costs at the grievance committee level and a $50 charge for administrative costs at the referee level.

(b) *Filing.* The referee's report and record of proceedings shall in all cases be transmitted together to the Executive Director of The Florida Bar for appropriate filing. Staff Counsel of The Florida Bar may return the report to the referee for corrections or for completion of an incomplete report and shall furnish Bar counsel and the respondent copies of his letter returning the report. Bar counsel and respondent shall have 15 days from the date of the Staff Counsel letter to request a hearing before the referee on the subject matter of the letter. A referee's report and record which contains a finding of guilt and a recommendation of public reprimand, suspension from practice or disbarment shall be filed promptly by the Executive Director or Staff Counsel directly in the Supreme Court and shall thereafter be subject to review by either party as hereinafter provided. A referee's report containing a finding of not guilty or a finding of guilty with a recommendation of private reprimand shall not be filed in the Supreme Court unless review is sought as hereinafter provided. The Executive Director or Staff Counsel shall serve copies of the report on the parties.

(c) *Action by the Board of Governors.*

(i) If the report of the referee contains a finding of not guilty, the Board of Governors may either concur in such finding and dismiss the charges; find the respondent guilty of misconduct and issue a private reprimand; or find the respondent guilty and deserving of a public reprimand, suspension or disbarment and seek review of the finding of the referee in the Supreme Court as provided in Rule 11.09. If the report of the referee contains a finding of guilty and a recommendation of private reprimand, the Board may either find the respondent not guilty and dismiss the charges; concur with the referee and issue a private reprimand; or seek review of the recommended discipline in the Supreme Court as provided in Rule 11.09.

(ii) If the Board of Governors disagrees with a referee's report finding the respondent guilty which has been filed directly in the Supreme Court as provided in Rule 11.06 (9)(b), the Board shall have the right to file a motion in the Supreme Court to have the charges dismissed.

(iii) If the Board of Governors disagrees with the discipline recommended in a referee's report finding the respondent guilty, the Board may seek review in the Supreme Court as provided in Rule 11.09.

(10) The record.

(a) *Reporting of testimony.* All hearings at which testimony is presented shall be reported and the transcript of the testimony shall be filed in the cause.

(b) *Contents.* The record shall include all items properly filed in the cause including pleadings, transcript of testimony, exhibits in evidence and report of referee.

(11) Plea of guilty by accused or respondent. At any time during the progress of disciplinary proceedings an accused attorney or respondent may tender a plea of guilty.

(a) *Before filing of complaint.* If the plea is tendered before filing of a complaint by bar counsel such plea shall be tendered in writing to the Board of Governors. The Board may direct such further investigation as is warranted and formulate charges and serve such charges upon the accused so that he may enter his plea of guilty thereto in writing by filing the same with the Executive Director within ten (10) days thereafter. Thereafter the Board of Governors shall consider the charges and either order a private reprimand or petition the Supreme Court for entry of judgment imposing other discipline.

(b) *After filing of complaint.* If the complaint has been filed against the respondent by bar counsel he may enter a plea of guilty thereto by filing the same in writing with the referee to whom the cause has been assigned for trial. Such referee shall take such testimony in relation thereto as he may be advised, following which he will enter his report as otherwise provided.

(c) *Unconditional.* A plea of guilty shall be unconditional in terms, but shall not preclude review as to disciplinary measures imposed.

(d) *Procedure.* Except as herein provided all procedure in relation to disposition of the cause on pleas of guilty shall be as elsewhere provided in these rules.

(12) Private reprimand. A private reprimand ordered by the Board of Governors shall be administered so as not to violate the rule concerning the confidential nature of disciplinary proceedings. Due notice shall be given to the respondent of any hearing to administer the reprimand. The respondent shall appear personally, if required, and a memorandum of the hearing shall be made a part of the record of the proceeding. When personal appearance of the respondent is not required, administration of the reprimand will be accomplished by letter from the President of The Florida Bar to the respondent. Such letter may incorporate the report of the referee by reference as the reprimand or a separate order of private reprimand may be signed by the President and served on the respondent with such letter.
As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.07: Discipline Upon Conviction

(1) Determination or judgment of guilt. Determination or judgment of guilt of a member of The Florida Bar by a court of competent jurisdiction upon trial or plea of any crime or offense that is a felony under the laws of this state, or under the laws under which any other court making such determination or entering such judgment exercises its jurisdiction, shall be conclusive proof of the guilt of the offense charged for the purposes of these rules. Upon such determination or entry of such judgment of guilt by any court of this state, the judge or the clerk thereof shall transmit a certified copy of such determination or judgment to the clerk of this court and to the Executive Director of The Florida Bar.

(2) Suspension by judgment (Florida). If such judgment of guilt is entered by a court of the State of Florida, the convicted attorney shall stand suspended as a member of The Florida Bar on the 11th day following the entry of the judgment unless he shall before that day file a petition with the Supreme Court to modify or terminate such suspension as elsewhere provided. If such petition is filed on or before the 10th day following the entry of the judgment, the suspension will be thereby deferred until entry of an order upon the petition.

(a) *Petition to modify or terminate suspension.* At any time after the entry of a judgment of guilt, the convicted attorney may file a petition with the Supreme Court to modify or terminate such suspension and shall serve a copy thereof upon the Executive Director.

An opportunity to respond to the petition and appear at any hearing on the petition shall be afforded to The Florida Bar. If such petition is filed after the tenth day following the entry of judgment of guilt, the suspension shall remain in effect pending disposition of the petition. Modification or termination of suspension shall be granted only upon a showing of good cause.

(b) *Continuation of suspension until final disposition.* If an appeal is taken by the convicted attorney from the judgment of the trial court in the criminal proceeding, and on review the cause is remanded for further proceedings, the suspension shall remain in effect until the final disposition of the criminal cause unless modified or terminated by the Supreme Court as elsewhere provided.

(c) *Termination of suspension.* Such suspension shall continue until final disposition of the criminal cause unless sooner terminated by order of the Supreme Court as elsewhere provided. A final disposition of the criminal cause resulting in acquittal will terminate the suspension. A final termination of the criminal cause resulting in a determination or judgment of guilt shall continue the suspension until expiration of all periods for appeal and rehearing, and until after termination of disciplinary proceedings by The Florida Bar as elsewhere provided.

(3) Suspension by judgment (other than by state court). If any such determination or judgment of guilt is entered by any court other than a court of the State of Florida, the convicted attorney shall stand suspended as a member of The Florida Bar on the 11th day following the filing with the clerk of the Supreme Court of a certified copy of such determination or judgment, accompanied by proof of service of notice of such filing upon the convicted attorney; provided, however, that if the convicted attorney shall prior to the 11th day file a petition with the Supreme Court to modify or terminate the suspension, then the suspension will be deferred until entry of an order upon the petition.

(4) Disciplinary judgment after conviction. If a determination or judgment of guilt of a felony is entered against a member of The Florida Bar and becomes final without appeal or by affirmance on appeal, such judgment shall be conclusive proof of the guilt of the offense charged. The suspension imposed on the conviction shall after final conviction, remain in effect until the convicted attorney is reinstated under the rule herein provided for reinstatement or The Florida Bar may at any time aft-

er final conviction initiate a disciplinary action against the convicted attorney if deemed advisable.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857).

Rule 11.08: Resignation Pending Disciplinary Proceedings

An attorney may resign from The Florida Bar during the progress of disciplinary proceedings against him in the following manner:

(1) Definition. If a disciplinary agency is investigating the conduct of an attorney, or if such an agency has recommended probable cause, then disciplinary proceedings shall be deemed to be pending and the resignation shall be made pursuant to this rule.

(2) Petition for leave to resign. The petition for leave to resign shall be filed with the Supreme Court and shall contain a statement of all past and pending disciplinary actions and criminal proceedings against the petitioner. Such statement shall describe the charges made or under investigation for professional misconduct, results of past proceedings and the status of pending investigations and proceedings. A copy of the petition shall be served upon the Executive Director of The Florida Bar.

(3) Judgment. Within 60 days after filing and service of the petition The Florida Bar may file with the Supreme Court its response to the petition either supporting or opposing the petition for leave to resign. A copy of the response shall be served upon petitioner. The Supreme Court shall consider the petition, any response thereto and the charges against the accused. If it has been shown by the petitioner in a proper and competent manner that the public interest will not be adversely affected by the granting of the petition, and that such will not adversely affect the purity of the courts nor hinder the administration of justice nor the confidence of the public in the legal profession, the Supreme Court shall enter an appropriate judgment granting leave to resign; otherwise, the petition shall be denied. If the judgment grants to the petitioner leave to resign, the judgment may require that the resignation be subject to appropriate conditions.

(4) Delay of disciplinary proceedings. The filing of a petition for leave to resign pending disciplinary proceedings shall not stay the progress of the disciplinary proceedings without the approval of the Board of Governors.

(5) If resignation is accepted under this rule such resignation shall serve to dismiss all pending disciplinary cases. The resigned attorney may be again admitted to the Bar upon application to and approval by the Board of Governors and upon full compliance with any conditions required by the judgment which granted the leave to resign. A rejection of such application may be reviewed by petition to the Supreme Court.

(6) In the case of a resignation submitted in connection with a disciplinary action, no readmission application may be filed until three years after the date of the Supreme Court order which accepted such resignation nor until all costs in disciplinary cases that were dismissed because of the resignation have been paid by the applicant for readmission.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.09: Review by Supreme Court

All reports of a referee and all judgments entered in proceedings under these rules shall be subject to review by the Supreme Court in the following manner:

(1) Right of review. Any party to a proceeding may procure review of a report of a referee or a judgment, or any specified portion thereof, entered under the Integration Rule.

(2) Appointment of bar counsel. The Board of Governors may appoint new or additional bar counsel to represent The Florida Bar on any review.

(3) Procedure for review. Review by the Supreme Court shall be in accordance with the following procedure:

(a) Proceedings for review shall be commenced within 30 days after the mailing date of a letter from the Executive Director or Staff Counsel serving a copy of the referee report on the respondent. The proceeding shall be commenced by filing with the Supreme Court a petition for review specifying those portions of the report of a referee sought to be reviewed. Within 10 days after service of such petition the opposing party may file a cross-petition for review specifying any additional portion of

the report or judgment which said party desires reviewed. The filing of such petition or cross-petition shall be jurisdictional as to a review to be procured as a matter of right.

(b) *Record on review.* A referee's report containing a finding of guilt and a recommendation of public reprimand, suspension or disbarment shall be filed by the Executive Director of The Florida Bar directly in the Supreme Court accompanied by the record of proceedings. When review sought is of a referee's report which has not been filed in the court or from action by the Board of Governors based thereon, the referee's report and record of proceedings shall be promptly filed in the Supreme Court by the Executive Director of The Florida Bar upon the filing of a petition for review. If the review sought is of an order or judgment from a circuit court, the clerk of the court shall forward the entire record to the Supreme Court within ten (10) days after the filing with such clerk of a copy of the petition for review, or within ten (10) days after the filing of the transcript of testimony, whichever shall last occur.

(c) *Briefs.* The party first seeking review shall file a brief in support of the petition for review at the time of the filing of the petition. The opposing party shall file an answering brief within twenty (20) days after the service of the brief of the party seeking review, which answering brief shall also support any cross-petition for review. The party originally seeking petition for review may file a reply brief within ten (10) days after the service of the answering brief.

(d) *Oral argument.* Request for oral argument shall be filed in every case wherein a petition for review is filed, at the time of filing the first brief. If no request is filed the case will be disposed of without oral argument.

(e) *Burden.* Upon review, the burden shall be upon the party seeking review to demonstrate that a report of a referee or a judgment sought to be reviewed is erroneous, unlawful or unjustified.

(f) *Judgment of Supreme Court.* After review the Supreme Court shall enter an appropriate order or judgment. If no review is sought of a judgment or report of a referee entered under the rules and filed in the court, the disciplinary measure recommended by the referee shall be the disciplinary measure imposed by the court unless the court directs the parties to submit briefs or oral argument directed to the suitability of the disciplinary measure recommended by the referee.

(4) Precedence of proceedings. Petitions for review in disciplinary proceedings shall take precedence over all other civil causes in the Supreme Court.

(5) Extraordinary writs. All applications for extraordinary writs which are concerned with disciplinary proceedings under these rules of discipline shall be made to the Supreme Court.

(6) Florida Appellate Rules. To the extent necessary to implement this rule and if not inconsistent herewith, the Florida Appellate Rules shall be applicable to petitions for review in disciplinary proceedings, provided service on The Florida Bar shall be accomplished by service on bar counsel and the Executive Director.

(7) Contempt by accused or respondent. Whenever it is alleged that an accused or respondent is in contempt in a disciplinary proceeding, a petition for rule to show cause why the accused or respondent should not be held in contempt and the proceedings on such petition may be filed in and determined by the Supreme Court or as provided under Rule 11.13(5).

(8) Whenever disbarment has been recommended in a referee report or in a petition for review filed by the Bar, the Executive Director, on request of the court, will file with the court a certificate summarizing other disciplinary cases then pending against the respondent; and if disbarment is ordered by the court, dismissal without prejudice of the pending cases listed in the certificate or petition may on request of the Board of Governors be ordered in the court's disbarment order.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.10: Discipline by Supreme Court

The judgments entered finding members of The Florida Bar guilty of misconduct shall include one or more of the following disciplinary measures:

(1) Probation. The respondent may be placed upon probation for a stated period of time of not less than six (6) months nor more than three (3) years. The judgment shall state the conditions of the probation which may include the following: supervision of all or part of the respondent's work by a member of The Florida Bar; the making of reports to a designated agency; the satisfactory completion of a course of study or a paper

on legal ethics approved by the Supreme Court; such supervision over fees and trust accounts as the court may direct. Failure to observe the conditions of the probation, or a finding of probable cause as to conduct of the respondent committed during the period of probation, shall terminate the probation. In such event, even though such finding of probable cause shall be made after the expiration of the period of probation, the judgment shall be reconsidered and an appropriate judgment shall be entered. On termination of probation for failure to observe the conditions of probation or on a finding of probable cause for misconduct committed during the period of probation the attorney may be punished for contempt or suspended from the practice of law on petition by The Florida Bar and any such suspension shall continue until the respondent may be reinstated to the practice of law as provided elsewhere in these rules.

(2) Public reprimand. A public reprimand shall be administered in the manner prescribed in the judgment. Due notice shall be given to the respondent of any hearing set down to administer the reprimand. The respondent shall appear personally if required, and a memorandum of the hearing shall be made a part of the record of the proceeding.

(3) Suspension. The respondent may be suspended from the practice of law for an appropriate time or for a definite period of time and an indefinite period thereafter to be determined by the conditions imposed by the judgment. During such suspension the respondent shall continue to be a member of The Florida Bar but without the privilege of practicing; and upon the expiration of the suspension period and the satisfaction of all conditions accompanying the suspension, the respondent shall become eligible to all of the privileges of membership in The Florida Bar. A suspension of three months or less shall not require proof of rehabilitation or satisfactory passage of The Florida Bar examination; a suspension of more than three months shall require proof of rehabilitation; no suspension shall be ordered for a specific period of time in excess of three years. Suspensions which continue for over three years shall require proof of rehabilitation and may require satisfactory passage of The Florida Bar examination subsequent to the date of suspension.

(4) Disbarment. A judgment of disbarment terminates the respondent's status as a member of the Bar. A former member who has been disbarred may only be admitted again upon full compliance with the rules and regulations governing admissions to the Bar. Except as might be otherwise provided in these rules,

no application for admission may be tendered within three years after the date of disbarment.

(5) Temporary suspension and probation. On petition of The Florida Bar, authorized by its President, President-elect or Executive Director, supported by an affidavit demonstrating facts personally known to affiant showing that an attorney appears to be causing great public harm by misappropriating funds to his own use, or otherwise, the Supreme Court may issue an order with such notice as the court may prescribe imposing temporary conditions of probation on said attorney as provided in Rule 11.10(1) or temporarily suspending said attorney. Any order of temporary probation which restricts the attorney maintaining a trust account shall, when served on any bank maintaining an account against which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the court. Any order of temporary suspension issued under this rule shall preclude the attorney accepting any new cases but shall not preclude him continuing to represent existing clients during the first thirty days after issuance of such temporary order; however, any fees tendered to such attorney during such thirty day period shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by the court. The attorney may for good cause request dissolution or amendment of any such temporary order by petition filed with the Supreme Court, a copy of which will be served on the Executive Director. Such petition for dissolution shall be set for immediate hearing before a referee designated by the President of The Florida Bar or in the event of his unavailability then designated by the President-elect. The designated referee shall hear such petition forthwith and submit his report and recommendation to the Supreme Court with the utmost speed consistent with due process. Upon receipt of the referee report the Supreme Court shall modify its order if appropriate and continue such provision of the order as may be appropriate until final disposition of all pending disciplinary charges against said attorney.

(6) Notice to clients. Upon service on the respondent of an order of disbarment, suspension, temporary suspension or placement on the inactive list the respondent shall, unless this requirement is waived or modified in the Court's order, forthwith furnish a copy of the order to all of his clients with matters pending in the respondent's practice and within 30 days after service

of the order the respondent shall furnish Staff Counsel of The Florida Bar a sworn affidavit listing the names and addresses of all clients who have been furnished copies of the order.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.11: Reinstatement

An attorney who has been suspended may be reinstated to membership in The Florida Bar pursuant to this rule. The proceedings under this rule are not applicable to suspension for nonpayment of dues.

(1) Petitions: form, contents, fingerprints.

(a) *Filing.* The original petition for reinstatement and three (3) copies thereof shall be in writing, verified by the petitioner, addressed to the Board of Governors and filed with the Executive Director at the office of The Florida Bar in Tallahassee. With the filing of his petition the petitioner shall furnish two sets of his fingerprints on record cards furnished by The Florida Bar for this purpose. One (1) copy of the petition shall be promptly filed by the Executive Director with the Clerk of this court.

(b) *Form and exhibits.* The petition shall be in such form and shall be accompanied by such exhibits as the Board of Governors shall prescribe. The information required concerning the petitioner may include any or all of the following matters in addition to such other matters as may be reasonably required to determine the fitness of the petitioner to resume the practice of law: criminal and civil judgments; disciplinary judgments; copies of income tax returns together with consents to secure original returns; occupation during suspension and information in connection therewith; financial statements; statement of restitution of funds which were the subject matter of disciplinary proceedings. When proof of rehabilitation or passage of The Florida Bar examination is a condition for removal of the suspension then the petitioner may file his petition requesting reinstatement any time within three months prior to the expiration of the specific period of suspension so that entry of the order on the petition for reinstatement will not be unduly delayed beyond the period of definite suspension.

(2) Deposit for cost. The petition shall be accompanied by a deposit in such amount as the Board of Governors shall pre-

scribe to insure payment of reasonable costs of the proceeding. Such costs in the discretion of the Board of Governors may include court reporters' fees, witness fees and traveling expenses, and reasonable traveling expenses and out-of-pocket costs of the referee or investigative committee and attorneys for The Florida Bar.

(3) Reference of petition for hearing. The Board of Governors shall refer the petition for reinstatement for investigation. Such investigation may be by means of formal hearing and findings or otherwise. Such reference shall be in the discretion of the Board of Governors to a referee, a grievance committee of the county where the petitioner resides, or formerly resided, or to a reinstatement committee to be appointed by the Board of Governors. Provided, however, that no such reference shall be made until evidence is submitted showing that all costs assessed against the petitioner in all disciplinary proceedings have been paid. Provided, further, that the petition shall be referred to a referee designated by the Supreme Court if requested by petitioner.

(4) Attorney for the Bar. When a petition for reinstatement is filed, the Board of Governors may appoint, or may request any local bar association to appoint, from the active members of The Florida Bar, one or more attorneys to represent The Florida Bar in the proceeding. The duties of such attorneys shall be to appear at the hearings and to prepare and present to said committee or referee evidence which, in the opinion of the committee or referee or such attorneys, should be considered in passing upon the petition.

(5) Procedure. The referee or committee to which the petition for reinstatement is referred shall conduct the investigation as a trial in the same manner, to the extent practical, as proceedings are conducted under the rule concerning trials. The matter to be investigated and decided shall be the fitness of the petitioner to resume the practice of law.

(6) Hearing; notice; evidence.

(a) *Notice.* The committee or referee to whom the petition for reinstatement is referred shall fix a time and place for hearing, and notice thereof shall be given at least ten (10) days prior to the hearing to the petitioner, to attorneys representing The Florida Bar, and to such other persons as may be designated by any member of the committee or the referee to which the petition is referred.

(b) *Appearance.* Any of said persons to whom notice is given, any other interested persons, or any local bar association, may appear before said committee in support of or in opposition to the petition at any time or times fixed for hearings thereon.

(c) *Failure of petitioner to be examined.* For the failure of the petitioner to submit to examination as a witness pursuant to notice given, the Board of Governors shall dismiss the petition for reinstatement unless good cause is shown for such failure.

(7) Prompt hearing; report. The committee or referee to which a petition for reinstatement has been referred by the Board of Governors shall proceed to a prompt hearing, at the conclusion of which it shall make and transmit to the Board of Governors a report which shall include the findings of fact and a recommendation as to whether or not the petitioner is qualified to resume the practice of law. Such report shall be in the form prescribed by the Board of Governors.

(8) Notice of reinstatement committee's or referee's report. When the report of the committee or referee is received at the office of the Executive Director in Tallahassee, a copy thereof shall be sent by the Executive Director to the petitioner and to the members of The Florida Bar representing the Bar and to each local bar association appearing in the proceeding. A copy of the letter of transmittal, bearing the date of mailing and the name of the person mailing the same, shall be retained in the office of The Florida Bar and shall be prima-facie evidence of the mailing thereof upon said date.

(9) Statement in opposition or support. At any time within ten (10) days after mailing of notice of report the petitioner or the member of The Florida Bar representing the Bar or any local bar association may file in the office of The Florida Bar in Tallahassee an original and three (3) copies of a typewritten statement in support of or in opposition to the report.

(10) Judgment. After filing of said report, the Board of Governors shall review the petition, the findings and recommendations of the committee or referee and the record before such committee or referee and shall determine whether it shall support or oppose reinstatement. The Board shall file its recommendation, together with the record of proceedings, in the Supreme Court and shall serve a copy upon the petitioner. The Supreme Court shall then enter an appropriate judgment. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume

the practice of law, the judgment shall reinstate him in The Florida Bar; provided, however, that the judgment may make such reinstatement conditional upon the payment of all or parts of the costs of the proceeding, and upon the making of partial or complete restitution to parties harmed by the petitioner's misconduct which led to the suspension of his membership in The Florida Bar; and further provided, however, that if suspension of petitioner has continued for more than three years, the reinstatement may be conditioned upon the furnishing of such proof of competency as may be required by the judgment in the discretion of the Supreme Court, which proof shall include certification by the Florida Board of Bar Examiners of the successful completion of an examination for admission to The Florida Bar subsequent to the date of suspension.

(11) Successive petitions. No petition for reinstatement shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.12: Confidential Nature of Proceedings

All matters including files, preliminary investigation reports, inter-office memoranda, records of investigations and the records in trials and other proceedings under these rules, excepting only those matters in connection with proceedings initiated in circuit courts are all property of The Florida Bar. All of such matters having to do with (1) investigation and other proceedings to determine probable cause, (2) trials upon a finding of probable cause, and (3) resignations pending disciplinary proceedings, shall be confidential to all parties participating therein or having knowledge thereof except as otherwise provided in these rules. All of such persons shall be admonished by the agency before whom they appear to observe the confidential nature of such proceedings. Provided, however, that the confidential nature of such proceedings is subject to the following exceptions:

(1) Public record. Those parts of proceedings prior to trial which are required to be served upon an accused, and the record of the proceeding as elsewhere defined, shall become public information in the following instances:

(a) *Request of accused or respondent.* If the accused or respondent shall file in the proceeding a request in writing that the proceedings be made public information.

(b) *Circuit court.* If the proceeding is in a circuit court; but proceedings in contempt of confidential proceeding shall preserve the confidentiality of the disciplinary proceeding as elsewhere provided.

(c) *Judgment of suspension or disbarment.* Upon entry of a judgment of suspension from practice, disbarment or of public reprimand.

(d) *Review by Supreme Court.* Upon the filing of a petition for review in the manner provided by the rule governing review by the Supreme Court.

(2) Resignation pending disciplinary proceedings. If an accused or respondent shall resign pending disciplinary proceedings which are confidential, such proceedings shall remain confidential except as follows: If the resigned member of The Florida Bar shall apply for readmission to The Florida Bar or for admission to the bar of any other jurisdiction, the Florida Board of Bar Examiners and the comparable body having jurisdiction of an application for admission in the other jurisdiction shall be given access to the files of The Florida Bar for the purpose of evaluating the applicant's competency to practice law.

(3) Evidence of crime. The confidential nature of disciplinary proceedings and the oath given to witnesses therein shall not proscribe the filing of informations and the giving of testimony before grand juries by individuals having knowledge of facts indicating the commission of crime if such knowledge was obtained independently of disciplinary proceedings.

(4) Information concerning proceeding. No information concerning the pendency or status of an investigation or trial or other confidential matter shall be given unless and until a record of the proceedings is filed with the clerk of this Court or unless authorized by the Board of Governors; provided, however, that any judge of a court of record having a judicial interest in the matter may be advised in confidence of the status of proceedings as to a particular accused or respondent, and provided further that a complainant may be advised in confidence of the pending status or final disposition of such complaint.

(5) Additional waiver or confidentiality in matters involving commission of a crime, unfitness to practice law and great public interest. Notwithstanding the rules of confidentiality elsewhere stated in the Integration Rule, confidentiality of disciplinary proceedings shall be waived commencing with the filing of the formal complaint contemplated by Rule 11.05 after the probable

cause finding by a grievance committee or the Board of Governors as therein set forth, in cases involving:

(a) A felony or other serious crime, or

(b) Conduct by an accused which constitutes a general unfitness to practice law, or

(c) Where the public interest clearly demands and the constitutional guaranties of the accused will not be thereby violated or denied;

provided, however, that, prior to any waiver of confidentiality, the accused shall have 15 days to petition the full Board of Governors to maintain confidentiality for good cause shown, after notice of probable cause is served on him by certified mail with return receipt personally signed by the accused or by other means of personal service. Such letter of service shall advise that confidentiality shall be waived under the Rule unless such petition to the Board is timely filed and favorably considered. Upon such petition being filed, confidentiality shall be maintained until disposition of such petition. Once waiver is effected it will include the formal complaint and all subsequent proceedings thereon unless it is thereafter determined for good cause by the Board of Governors to re-invoke confidentiality.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857); as amended June 26, 1974, effective Aug. 1, 1974 (297 So.2d 10).

Rule 11.13: Additional Rules of Procedure

(1) Time is directory. Except as otherwise provided in these Rules of Discipline, the time intervals required are directory only and are not jurisdictional. Failure to observe such directory intervals may result in contempt of the agency having jurisdiction or of the Supreme Court, but will not prejudice the offending party except where so provided.

(2) Notice in lieu of process. Every member of The Florida Bar is within the jurisdiction of the Supreme Court and its agencies under these rules, and service of process is not required to obtain jurisdiction over respondents in disciplinary proceedings; but due process requires the giving of reasonable notice and such shall be effective by the service of the complaint upon the respondent by mailing a copy thereof by registered or certified mail return receipt requested to the last known address of the respondent according to the records of The Florida Bar or such later address as may be known to the person effecting the service.

(3) Subpoenas. Subpoenas for the attendance of witnesses and the production of documentary evidence other than before a circuit court shall be issued as follows:

(a) *Referees.* Subpoenas for the attendance of witnesses and production of documentary evidence before a referee shall be issued by the referee and shall be served in the manner provided by law for the service of process.

(b) *Grievance committees.* Subpoenas for the attendance of witnesses and the production of documentary evidence before a grievance committee may be issued by any member of a grievance committee in pursuance of an investigation authorized by the committee. Such subpoenas may be served by any member of such committee or in the manner provided by law for the service of process.

(c) *Reinstatement committees.* Subpoenas for the attendance of witnesses and the production of documentary evidence before a reinstatement committee shall be issued by the chairman, vice-chairman or secretary of such committee, and shall be served in the manner provided by law for the service of process.

(d) *Board of Governors.* Subpoenas for the attendance of witnesses and the production of documentary evidence before the Board of Governors shall be issued by the Executive Director under the seal of The Florida Bar, and shall be served in the manner provided by law for the service of process.

(e) *Confidential proceedings.* If the proceeding is confidential a subpoena shall not name the accused or respondent but shall style the proceeding as "Confidential proceeding by The Florida Bar under the Rules of Discipline."

(f) *Contempt.* Any person who without adequate excuse fails to obey such a subpoena served upon him may be cited for contempt of this court in the manner provided by this rule.

(4) Oath of witnesses. Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding nor the identity of the accused or respondent until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt of this court.

(5) Contempt. If an agency other than a circuit court shall find that a person is in contempt under these rules, such person shall be cited for contempt in the following manner, except that an accused or respondent in a disciplinary proceeding may be

cited for contempt by petition for rule to show cause filed and heard in the Supreme Court or in the circuit court.

(a) *Petition for rule to show cause.* The agency shall direct bar counsel or chairman of the agency if there is no bar counsel serving in the matter in which the contempt occurs, to present to the circuit court having jurisdiction a petition for the issuance of a rule to show cause why the person so accused should not be held in contempt of this court.

(b) *Confidentiality.* If the proceeding in which the contempt occurs is a confidential proceeding, the confidentiality shall be preserved in the contempt proceeding in the following manner: pleading shall be styled "Proceeding by The Florida Bar under the Rules of Discipline, The Florida Bar v. (name of accused in contempt proceeding)." No pleadings or matters shall be filed with the clerk of the circuit court; instead all such matters shall be presented to the circuit judge hearing the same and shall be returned to the agency upon completion of the contempt proceedings and then filed with the Executive Director. Docket entries and sentences or judgments in contempt proceedings, if entered in the office of the clerk of the circuit court, shall be styled as provided for pleadings and shall make no references to the accused or the respondent in the disciplinary proceeding in which the contempt occurred. If the name of the accused or respondent shall become of public record, the court having jurisdiction in the contempt proceeding shall take appropriate steps to preserve the confidentiality of the disciplinary proceedings, and shall consider whether or not the person responsible for the making of the name of the accused or respondent of public record is also guilty of contempt under these Rules of Discipline.

(c) *Appellate review.* A judgment in such contempt proceedings may be appealed by either party in the manner provided in the rule on appellate review, except that a copy of the petition for appeal shall not be filed with the clerk of the circuit court, and the record shall be forwarded by the judge or the agency possessing the same.

(6) Consent judgment.

(a) *Before referee and bar counsel are appointed.* If before a referee and bar counsel are appointed, an accused attorney states his or her desire to plead guilty to a grievance committee report that finds probable cause and recommends further disciplinary proceedings, then staff counsel (or assistant staff counsel) with the approval of the designated Board reviewer, may advise the

accused attorney of the discipline he will receive if a written plea of guilty is entered. No recommended discipline will be conveyed to the accused attorney unless staff counsel and a designated reviewer are in complete agreement and their agreement is reduced to writing and made a part of the file. If an accused attorney tenders a plea of guilty in exchange for a stated form of punishment and staff counsel and the designated reviewer cannot agree on acceptance or rejection of the conditional guilty plea, then the tendered plea will be referred to the Board of Governors for a final decision. Any proposed consent judgment more severe than a private reprimand shall before acceptance by The Florida Bar be submitted by The Florida Bar to the Supreme Court for approval.

(b) *After appointment of referee and bar counsel.* If an accused attorney states his or her desire to plead guilty to a grievance committee report or a filed complaint after a referee and bar counsel are appointed, then bar counsel, with the approval of staff counsel (or assistant staff counsel) and the designated reviewer, may advise the accused attorney of the discipline he will receive if a written plea of guilty is entered. No recommended discipline will be conveyed to the accused attorney unless the bar counsel, staff counsel, and the designated reviewer are in complete agreement and that agreement is reduced to writing and made a part of the file. If an accused attorney tenders a plea of guilty in exchange for a stated form of punishment, and bar counsel, staff counsel, and the designated reviewer cannot agree on acceptance or rejection of the conditional guilty plea, then the tendered plea will be referred to the Board of Governors for a final decision. Any proposed consent judgment more severe than a private reprimand shall before acceptance by The Florida Bar be submitted by The Florida Bar to the Supreme Court for approval.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857).

Rule 11.14: Disciplinary Proceedings in Circuit Courts

(1) Disciplinary matters in district courts of appeal and circuit courts. Whenever it shall be made known to any of the judges of the district courts of appeal or any judge of a circuit court in this state that a member of The Florida Bar practicing in any of the courts of his district or judicial circuit has been guilty of any unprofessional act as defined by this Integration Rule or the Code of Ethics adopted by this court, such judge

may direct the state attorney for the circuit in which such attorney shall have his office to make in writing a motion in the name of the State of Florida to discipline such attorney setting forth in the motion the particular act or acts of conduct for which the attorney is sought to be disciplined.

(2) **Copy served upon accused.** Upon the filing of such motion a copy thereof shall be served upon the accused attorney and he shall within ten (10) days after the service thereof, file his answer thereto. A copy of such motion shall be filed with the Executive Director of The Florida Bar at the time of service upon the accused attorney.

(3) **Trial before a circuit judge.** Upon the filing of the answer the presiding judge of the judicial circuit in which the accused attorney's office is located shall designate one of the judges thereof to try and determine said cause. Such judge shall conduct a hearing thereon and shall hear the evidence to be offered by the State of Florida and the accused. A representative or representatives of The Florida Bar, appointed by the Board of Governors of The Florida Bar, shall have the right to be present and to observe the proceedings. Upon the conclusion of said hearing, said judge shall enter such judgment of dismissal, reprimand, probation, suspension or disbarment as shall be appropriate to the circumstances.

The parties shall be entitled to compulsory process to force the attendance of any witnesses.

(4) **Judgment filed in Supreme Court.** If the judgment be one of public reprimand, suspension or disbarment, three (3) certified copies of the same shall be forthwith filed by the clerk of the trial court with the clerk of the Supreme Court of Florida. The clerk of the Supreme Court shall retain one (1) copy for his records, deliver to the Executive Director of The Florida Bar one (1) copy of said judgment for his official records, and shall forthwith serve the third copy upon the accused attorney.

(5) **Petition for appellate review.** The respondent may appeal from a judgment entered by a circuit court. Such appeal shall be made in the manner provided by the rule on appellate review.

(6) **Duty to expedite proceedings.** It shall be the duty of the state attorney who is directed to file said motion to file the same promptly and to dispose of said controversy expeditiously.

(7) **Concurrent jurisdiction of The Florida Bar.** The jurisdiction of the district courts of appeal and circuit courts created by

this rule and the procedure herein outlined shall be concurrent with that of The Florida Bar under the preceding portions of these Rules of Discipline. The forum first asserting jurisdiction in a disciplinary matter shall retain the same to the exclusion of the other until the final determination of the cause.

(8) **Readmission or reinstatement.** Readmission or reinstatement of attorneys disbarred or suspended by proceedings in circuit courts shall be governed as elsewhere provided in these rules.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857).

Rule 11.15: Statutes Superseded

These Rules of Discipline shall supersede such parts of Sections 454.18, 454.31 and 454.32, Florida Statutes 1969, as are in conflict herewith.

As amended effective June 30, 1969 (225 So.2d 881); as amended May 31, 1972, effective Dec. 1, 1972 (262 So.2d 857).